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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 81 Thursday,
No. 246 December 22, 2016

Pages 93791–94210

OFFICE OF THE FEDERAL REGISTER

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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.

NATIONAL COUNCIL ON DISABILITY

5 CFR Part 10000

RIN 3480–AA01

Freedom of Information Act

AGENCY: National Council on Disability.

ACTION: Final rule.

SUMMARY: The National Council on Disability (NCD) issues a final rule amending its Freedom of Information Act (FOIA) regulations to integrate required statutory mandates enacted by the FOIA Improvement Act of 2016 (The Improvement Act). These changes include a longer timeframe to file an appeal for administrative appeals and additional resources for dispute resolution services. Additionally, NCD issues this final rule so as to include comments which were submitted for NCD's existing FOIA regulations. But due to issues beyond NCD control, NCD did not receive the comments until after publication of the final rule.

DATES: This rule is effective December 22, 2016.

FOR FURTHER INFORMATION CONTACT: Joan Durocher, General Counsel, National Council on Disability, at 202–272–2004 or *jdurocher@ncd.gov.*

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this final rule is to amend several substantive and procedural provisions in NCD's FOIA regulation.[1] The Improvement Act requires NCD to amend its FOIA regulations to extend the deadline for administrative appeals, to add information on dispute resolution services, and to amend NCD's fee structure. Additionally, NCD issues this final rule to amend its regulations so as to integrate comments that were submitted regarding NCD's original FOIA regulations but were not received until after publication of the final rule. NCD will integrate some of the commenter's remarks in this final rule.

II. Section by Section Analysis of Amendments to 5 CFR Part 10000

For the reasons discussed above, NCD amends 5 CFR part 10000 as follows:

A. Section 10000.2

We revise § 10000.2 by:

1. Changing the word ''requestors'' to ''requesters'' in paragraphs (1) and (2) of the ''requester category'' definition.

B. Section 10000.6

We revise § 10000.6 by:

1. Changing ''FOIA Officer'' to ''Chief FOIA Officer'' in paragraph (b)(3); and
2. Adding NCD's FOIA Public Liaison and the Office of Government Information Services to the list of offices available to offer dispute resolution services in paragraph (b)(5); and
3. Changing ''the Council shall determine whether another agency of the federal government . . .'' to ''the Council shall determine whether another agency or entity of the federal government. . . .'' in paragraph (c).

C. Section 10000.7

We revise § 10000.7 by:

1. Adding the option to appeal by email in paragraph (a).
2. Changing the appeals deadline from 60 days to 90 days in paragraph (b); and
3. Adding NCD's FOIA Public Liaison and the Office of Government Information Services to the list of offices available to offer dispute resolution services in paragraph (c); and
4. Changing the word ''disputes between FOIA requestors'' to ''between FOIA requesters'' under paragraph (c).

D. Section 10000.8

We revise § 10000.8 by:

1. Changing ''FOIA Officer'' to ''Chief FOIA Officer'' in paragraph (h)(4).

III. Statutory Authority

1. The authority citation for parts 10000 is as follows:

Authority: 5 U.S.C. 552, as amended; E.O. 12600, 52 FR 23781, 3 CFR 1987, 1987 Comp., p. 235; 3 CFR part 235.

IV. Regulatory Analysis

We have determined that the amendments mandated by the Improvement Act involve agency management and 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 technical changes only and are required by statute, 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)(B) of the APA, an agency may publish regulations in final form when the agency for good cause finds the notice and public procedure thereon impracticable, unnecessary, or contrary to public interest. The amendments are required by statute, are not a matter of agency discretion, and provide additional protections to the public through the existing regulations. Thus, notice and public procedure are impracticable, unnecessary, and contrary to the public interest.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 601 *et seq.*), generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking under the APA or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions. The Council considered the effects on this final rule on small entities and certifies that these final rules will not have a significant impact on a substantial number of small entities.

List of Subjects in 5 CFR Part 10000

Administrative practice and procedure, Confidential business information, Freedom of information, Privacy, Procedures for disclosure of records under the Freedom of Information Act.

[1] 80 FR 49117, August 17, 2015.

For the reasons discussed in the preamble, NCD amends 5 CFR part 10000 as follows:

PART 10000—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 10000 continues to read as follows:

Authority: 5 U.S.C. 552, as amended; E.O. 12600, 52 FR 23781, 3 CFR 1987, 1987 Comp., p. 235; 3 CFR 235.

■ 2. Amend § 10000.2 by revising paragraphs (1) and (3) of the definition for ''Requester category'' to read as follows:

§ 10000.2 Definitions.

* * * * *

Requester category * * *

(1) Commercial requesters;

* * * * *

(3) All other requesters.

* * * * *

■ 3. Amend § 10000.6 by revising paragraphs (b)(3) and (5) and the first sentence of paragraph (c) introductory text to read as follows:

§ 10000.6 Responsibility for responding to requests.

* * * * *

(b) * * *

(3) A brief statement of the reason(s) for the denial, including any FOIA exemption applied in denying the request. The Chief FOIA Officer will indicate, if technically feasible, the amount of information deleted and the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemption;

* * * * *

(5) A statement of the right to seek dispute resolution services from NCD's FOIA Public Liaison and the Office of Government Information Services.

(c) *Consultation, referral, and coordination.* When reviewing records located by the Council in response to a request, the Council shall determine whether another agency of the Federal Government or entity is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be released as a matter of discretion. * * *

* * * * *

■ 4. Amend § 10000.7 by revising paragraph (a), the first sentence of paragraph (b), and the fifth sentence of paragraph (c) to read as follows:

§ 10000.7 Administrative appeals.

(a) You may appeal an adverse determination related to your FOIA request, or the Council's failure to respond to your FOIA request within the prescribed time limits, by email at *FOIA@ncd.gov,* or write to the Executive Director, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004.

(b) Your appeal must be in writing and must be postmarked or electronically received by the Executive Director within 90 days of the date of the letter denying your request, in whole or in part. * * *

(c) * * * A requester may also seek dispute resolution services from NCD's FOIA Public Liaison and OGIS. * * *

■ 5. Amend § 10000.8 by revising the first sentence of paragraph (h)(4) to read as follows.

§ 10000.8 Timeframe for Council's response to a FOIA request or administrative appeal.

* * * * *

(h) * * *

(4) The Chief FOIA Officer will decide whether to grant or deny your request for expedited processing and notify the requester within ten calendar days of receipt. * * *

Dated: December 14, 2016.

Rebecca Cokley,

Executive Director.

[FR Doc. 2016–30475 Filed 12–21–16; 8:45 am]

BILLING CODE 8421–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

[FNS–2014–0010]

RIN 0584–AE25

Local School Wellness Policy Implementation Under the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Correcting amendments.

SUMMARY: This document contains technical corrections to the Code of Federal Regulations regarding the final rule published in the **Federal Register** on July 29, 2016, ''Local School Wellness Policy Implementation Under the Healthy, Hunger-Free Kids Act of 2010.''

DATES: This document is effective December 22, 2016. Compliance with this final rule began on August 29, 2016, except as noted in specific regulatory provisions.

FOR FURTHER INFORMATION CONTACT: Tina Namian, School Program Branch, Policy and Program Development Division, Food and Nutrition Service, 703–305–2590.

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service published a final rule in the **Federal Register**, 81 FR 50151, on July 29, 2016, to expand local school wellness policy requirements consistent with the requirements set forth in section 204 of the Healthy, Hunger-Free Kids Act of 2010. This document is redesignating 7 CFR 210.30 and 7 CFR 210.31. This document also makes a technical correction in 7 CFR 210.30(b)(1)(iv) to ensure readers clearly understand where to locate the established hiring standards.

List of Subjects in 7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grant programs-health, Grant programs-education, School breakfast and lunch programs, Nutrition, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 210 is corrected by making the following correcting amendments:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

§§ 210.30 and 210.31 [Redesignated as §§ 210.31 and 210.30]

■ 2. Redesignate §§ 210.30 and 210.31 as §§ 210.31 and 210.30, respectively.

§ 210.30 [Amended]

■ 3. In the newly designated § 210.30, paragraph (b)(1)(iv), remove ''§ 230.30(b)(1)'' and add in its place ''§ 210.30(b)(1)''.

Dated: December 15, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–30861 Filed 12–21–16; 8:45 am]

BILLING CODE 3410–30–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 792

RIN 3133–AD44

Revisions to the Freedom of Information Act Regulation

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: The NCUA Board (Board) is revising its Freedom of Information Act (FOIA) regulation. The FOIA Improvement Act of 2016 amended the FOIA and requires agencies to review their FOIA regulations and issue certain specified amendments by December 27, 2016. Specifically, the regulatory amendments include new procedures for disclosing records under the FOIA, assessing fees, and notifying requestors of options for resolving disputes through the NCUA FOIA Public Liaison and the Office of Government Information Services (OGIS) within the National Archives and Records Administration.

DATES: This interim final rule is effective December 22, 2016. Comments must be received on or before January 23, 2017.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: https://www.ncua.gov/regulation-supervision/Pages/rules/proposed.aspx.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on ''Revisions to the Freedom of Information Act Regulation'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Regina Metz, Senior Staff Attorney, or Linda Dent, Associate General Counsel, Administrative Law Section, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Legal Background and Regulatory Changes

NCUA publishes its FOIA regulations at part 792, subpart A of the agency's regulations.[1] NCUA's current FOIA regulations address: (1) Types of agency records; (2) their availability or exemption from release; (3) procedures for requesting access to records; (4) processing times; (5) fees; (6) appeals; and (7) handling of FOIA requests involving confidential commercial information.

The FOIA Improvement Act of 2016 [2] (Act) was signed into law by the President on June 30, 2016. The Act consists of several amendments to the FOIA affecting FOIA administration. The Act requires the Board to review NCUA's FOIA regulations and revise procedures for the disclosure of records, including procedures for engaging in dispute resolution through the FOIA Public Liaison and the OGIS.

Specifically, the Act requires that NCUA must make available to the public ''in an electronic format'' certain information that it previously only had to make available for copying. The Act amends FOIA exemption 5 to provide that ''the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.'' In addition, the Act prohibits NCUA from charging certain fees to FOIA requesters if it does not respond to them within 20 business days, unless it provides timely notice that unusual circumstances apply, in which case it can take up to 10 extra days, or more if there are more than 5,000 pages necessary to respond to the request. However, the Act permits NCUA to charge certain fees to FOIA requesters if a court has determined exceptional circumstances exist. Furthermore, the Act requires that NCUA must include in its written FOIA responses the right of requesters to seek assistance from the NCUA FOIA Public Liaison. Moreover, for adverse determinations, the requester will have the right to appeal the initial decision for 90 days (previously 30 days); and the right to seek dispute resolution services from the NCUA FOIA Public Liaison or the OGIS. Accordingly, the Board is making the above required regulatory changes to the FOIA regulation.

[1] 12 CFR part 792.

[2] Public Law 114–185, 130 Stat. 538.

II. Regulatory Procedures

A. Interim Final Rule Under the Administrative Procedure Act (APA)

The Board finds that notice-and-comment rulemaking in this instance would be impracticable and unnecessary under the APA because of: (1) The legislative directive for federal agencies to issue interim final regulations; (2) the procedural nature of the Act which affords federal agencies limited discretion in promulgating their rules; and (3) the statutory deadlines imposed by Congress for issuing this regulation. In these circumstances, the Board finds good cause to issue an interim final rule without issuing a notice of proposed rulemaking.

Accordingly, this interim final rule is issued without prior notice. However, the Board invites comments on all aspects of the interim final rule. The interim final rule will become effective immediately upon publication in the **Federal Register**. The Board will review and consider all comments before issuing a final rule.

B. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995,[3] the Board has reviewed the interim final rule and determined it does not contain or modify a collection of information subject to the PRA.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions (those under $100 million in assets). This interim final rule does not impose any requirements on federally insured credit unions. Therefore, it will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required. Because this interim final rule would affect few, if any, small entities, the Board certifies that the interim final rule will not have a significant economic impact on small entities.

D. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The interim final rule would not

[3] 44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1.

have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this interim final rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

NCUA has determined that this interim final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999.[4]

F. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where the Board issues a final rule as defined by Section 551 of the APA. The Board has submitted this interim final rule to the Office of Management and Budget for it to determine whether it is a ''major rule'' within the meaning of the relevant sections of SBREFA.

List of Subjects in 12 CFR Part 792

Administrative practice and procedure, Credit unions, Freedom of Information, Information, Privacy, Records, System of records.

By the National Credit Union Administration Board on December 15, 2016.

Gerard Poliquin,

Secretary of the Board.

For the reasons stated above, the National Credit Union Administration amends 12 CFR part 792 as follows:

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

■ 1. Revise the authority citation for part 792 to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b; 12 U.S.C. 1752a(d), 1766, 1789, 1795f; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p.235; E.O. 13526, 75 FR 707, 2009 Comp. p.298.

[4] Public Law 105–277, 112 Stat. 2681.

■ 2. In § 792.02, revise the introductory text and paragraph (d) to read as follows:

§ 792.02 What records does NCUA make available to the public for inspection and copying?

Except for records that are exempt from public disclosure under FOIA as amended (5 U.S.C. 552) or are promptly published and copies are available for purchase, NCUA routinely makes the following five types of records available for you to inspect and copy and in an electronic format:

* * * * *

(d) Copies of all records, regardless of form or format, which have been released after March 31, 1997, in response to a FOIA request and which, because of the nature of their subject matter, NCUA determines have been or are likely to become the subject of subsequent requests; or records that have been requested three (3) or more times; and

* * * * *

■ 3. In § 792.03, revise the introductory text and paragraph (c) to read as follows:

§ 792.03 How will I know which records to request?

NCUA maintains current indices providing identifying information for the public for any matter referred to in § 792.02, issued, adopted, or promulgated after July 4, 1967. The listing of material in an index is for the convenience of possible users and does not constitute a determination that all of the items listed will be disclosed. NCUA has determined that publication of the indices is unnecessary and impractical. You may obtain copies of indices by making a request to the NCUA, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–2387, Attn: FOIA Officer or as indicated on the NCUA Web site at *www.ncua.gov.* The indices are available for public inspection and copying, provided at their duplication cost, and in an electronic format. The indices are:

* * * * *

(c) *Popular FOIA Index:* Records released in response to a FOIA request, that NCUA determines are likely to be the subject of subsequent requests because of the nature of their subject matter, or records that have been requested three (3) or more times. The Popular FOIA Index is available on the NCUA Web site.

■ 4. In § 792.10, revise paragraph (e) to read as follows:

§ 792.10 What will NCUA do with my request?

* * * * *

(e) Upon a determination by the appropriate Information Center to comply with your initial request for records, the records will be made promptly available to you. NCUA will also advise the requester of the right to seek assistance from the FOIA Public Liaison. If we notify you of a denial of your request, we will include the reason for the denial. NCUA will also advise the requester of the right to utilize dispute resolution services offered by the FOIA Public Liaison and the Office of Government Information Services.

* * * * *

■ 5. In § 792.11, revise paragraph (a)(5) to read as follows:

§ 792.11 What kinds of records are exempt from public disclosure?

(a)* * *

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NCUA. This exemption preserves the existing freedom of NCUA officials and employees to engage in full and frank written or taped communications with each other and with officials and employees of other agencies. It includes, but is not limited to, inter-agency and intra-agency reports, memoranda, letters, correspondence, work papers, and minutes of meetings, as well as staff papers prepared for use within NCUA or in concert with other governmental agencies. In applying this exemption, the NCUA will not withhold records based on the deliberative process privilege if the records were created 25 years or more before the date on which the records were requested.

* * * * *

■ 6. In § 792.15, revise paragraph (b)(2) to read as follows:

§ 792.15 How long will it take to process my request?

* * * * *

(b) * * *

(2) Such alternative time period as mutually agreed by you and the Information Office, when NCUA notifies you that the request cannot be processed in the specified time limit. In such cases, NCUA will make available its FOIA Public Liaison and notify the requester of the right to seek dispute resolution services from the Office of Government Information Services.

■ 7. In § 792.16, revise paragraph (c) to read as follows:

§ 792.16 What unusual circumstances can delay NCUA's response?

* * * * *

(c) If NCUA sends you an extension notice, it will also advise you that you

can either limit the scope of your request so that it can be processed within the statutory time limit or agree to an alternative time frame for processing your request. In such cases, NCUA will make available its FOIA Public Liaison and notify the requester of the right to seek dispute resolution services from the Office of Government Information Services.

■ 8. Revise § 792.17 to read as follows:

§ 792.17 What can I do if the time limit passes and I still have not received a response?

(a) If NCUA does not comply with the time limits under § 792.15, or as extended under § 792.16, you do not have to pay search fees; requesters qualifying for free search fees will not have to pay duplication fees. However, if NCUA has extended the time limits under § 792.16 and more than 5,000 pages are necessary to respond to the request, NCUA may charge you search fees (or for requesters qualifying for free search fees, duplication fees), if NCUA has discussed with you via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how you could effectively limit the scope of the request.

(b) You can seek assistance from the FOIA Public Liaison or dispute resolution services from the Office of Government Information Services. You also can file suit against NCUA because you will be deemed to have exhausted your administrative remedies if NCUA fails to comply with the time limit provisions of this subpart. If NCUA can show that exceptional circumstances exist and that it is exercising due diligence in responding to your request, the court may retain jurisdiction and allow NCUA to complete its review of the records. You may have to pay search or duplication fees if a court has determined that exceptional circumstances exist and has extended the time limits for NCUA's response by a court order. In determining whether exceptional circumstances exist, the court may consider your refusal to modify the scope of your request or arrange an alternative time frame for processing after being given the opportunity to do so by NCUA, when it notifies you of the existence of unusual circumstances as set forth in § 792.16.

■ 9. In § 792.28, revise the introductory text to read as follows:

§ 792.28 What if I am not satisfied with the response I receive?

If you are not satisfied with NCUA's response to your request, you can seek dispute resolution services from the FOIA Public Liaison and the Office of Government Information Services, and you can file an administrative appeal. Your appeal must be in writing and must be filed within 90 days from receipt of the initial determination (in cases of denials of the entire request or denials of a fee waiver or reduction), or from receipt of any records being made available pursuant to the initial determination (in cases of partial denials). In the response to your initial request, the Freedom of Information Act Officer or the Inspector General (or designee), will notify you that you may appeal any adverse determination to the Office of General Counsel. The General Counsel, or designee, as set forth in this paragraph, will:

* * * * *

[FR Doc. 2016–30748 Filed 12–21–16; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–7531; Directorate Identifier 2015–NM–052–AD; Amendment 39–18747; AD 2016–25–21]

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 electrical shorts of the motor stator wiring burning a hole through the housing of the motor of the cabin air compressor (CAC). This AD requires installing modified inboard and outboard CAC modules on the left-hand (LH) side and right-hand (RH) side cabin air conditioning and temperature control system (CACTCS) packs. We are issuing this AD to prevent the unsafe condition on these products.

DATES: This AD is effective January 26, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 26, 2017.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; 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–2015–7531.

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–2015–7531; 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: Eric Brown, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6476; fax: 425–917–6590; email: *eric.m.brown@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 December 29, 2015 (80 FR 81220) (''the NPRM''). The NPRM was prompted by reports of electrical shorts of the motor stator wiring burning a hole through the housing of the motor of the CAC. The NPRM proposed to require installing modified inboard and outboard CAC modules on the LH side and RH side CACTCS packs. We are issuing this AD to prevent an electrical short from burning through the housing of the motor of the CAC. This condition, in combination with flammable fuel vapors, could result in a fire in the pack bay and consequent reduced controllability of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments

received on the NPRM and the FAA's response to each comment.

Support for the NPRM

United Airlines (UA) stated that it agrees with the proposed compliance time.

Request To Clarify the Unsafe Condition

Boeing asked that we clarify the unsafe condition in the NPRM to specify that for a fire to occur in the pack bay, an electrical short would have to burn through the housing of the CAC motor in combination with the presence of flammable fluid vapors. Boeing stressed that the top-level event requires both an ignition source and flammable fluid vapors.

We agree with the commenter's request for the reason provided. We have revised the unsafe condition in the Discussion section and paragraph (e) of this AD accordingly.

Requests To Increase Work-Hour Estimate

Boeing and Japan Airlines (JAL) asked that we increase the work-hour estimate in the ''Costs of Compliance'' section of the NPRM. Boeing stated that Boeing Alert Service Bulletin B787–81205–SB210055–00, Issue 001, dated March 12, 2015, specifies 25.25 work-hours for the LH side pack replacement and 28.25 work-hours for the RH side pack replacement. Boeing added that the NPRM should either specify 30 work-hours per side or 60 work-hours per airplane. JAL stated that the replacement for each pack specified in the proposed AD requires more than 25 work-hours, as specified in the referenced service information.

We agree. We have confirmed that the proposed work-hour estimate should be increased. Therefore, we have increased the work-hour estimate in the ''Costs of Compliance'' section of this final rule from ''up to 30 work-hours'' to ''up to 54 work-hours'' for accomplishing the required actions.

Request To Extend Compliance Time

JAL asked that the proposed compliance time for the CAC replacements specified in the NPRM be extended so the actions can be done during scheduled heavy maintenance. JAL stated that the replacement for each pack specified in the proposed AD requires more than 25 work-hours, which would necessitate a longer compliance time.

We do not agree with the commenter's request to extend the compliance time for the CAC replacements. We have determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to safely operate before the CAC replacements are accomplished. Airplanes affected by this AD will undergo at least one maintenance check (C-check) within the required compliance time (5 years after the effective date of this AD); the replacement can be done at that time. Therefore, we have made no change to this AD in this regard.

Request To Use Alternative Part

Aeromexico asked if installing an H10 CAC having part number (P/N) 7010101H10 could be considered as an alternative to installing H09 CAC parts having P/N 7010101H09. Aeromexico stated that Boeing Alert Service Bulletin B787–81205–SB210055–00, Issue 001, dated March 12, 2015, specifies installing the H09 CAC, but UTC Aerospace Systems (the parts vendor) stated that there are no H09 CACs presently available. Aeromexico added that UTC Aerospace Systems indicated that H10 CACs having P/N 7010101H10 will be available for retrofit during 2016. Aeromexico noted that Boeing and UTC Aerospace Systems have indicated that P/N 7010101H09 and P/N 7010101H10 will be interchangeable.

We agree that clarification is necessary. Future part designs might be acceptable as replacement parts for the part mandated by this AD, because those future parts should include design changes meant to address the unsafe condition identified in this AD. However, we do not agree to allow use of P/N 7010101H10 CACs, because P/N 7010101H10 is not an approved part for installation on Model 787 airplanes at this time. Therefore, under the provisions of paragraph (h) of this AD, we will consider requests for approval of specific parts as an alternative method of compliance (AMOC) with this AD if data are submitted to substantiate that those parts would provide an acceptable level of safety. We have not revised this AD in this regard.

Request To Clarify Certain Actions in Service Information

UA asked that, for Group 1 airplanes in Work Packages 1 and 2 of the Work Instructions of Boeing Alert Service Bulletin B787–81205–SB210055–00, Issue 001, dated March 12, 2015, the steps identified as RC (Required for Compliance) be changed to refer to all applicable steps within that service information instead of referring to the actions specified in UTC Aerospace Systems Service Bulletins 7010188–21–6 and 7010189–21–6, both Revision 1, both dated January 30, 2015. UA stated that referring to the UTC Aerospace Systems service information forces operators to request multiple AMOCs in order to comply with the actions in the proposed AD.

We agree that clarification is necessary. Although certain steps, which describe the access, removal, and installation of the CACs, are labeled as ''RC,'' the specifics of how those actions are to be accomplished are not mandated. The Work Instructions in Boeing Alert Service Bulletin B787–81205–SB210055–00, Issue 001, dated March 12, 2015, do refer to UTC Aerospace Systems, Service Bulletins 7010188–21–6 and 7010189–21–6, both Revision 1, both dated January 30, 2015, for accomplishing certain actions, but that service information is only an additional source of service information that operators may use (as indicated by the use of the words ''refer to'' in the RC step).

UA asked that the UTC Aerospace Systems kit part number be called out in paragraph 3.A. under ''Parts Necessary for Each Airplane,'' in data module B787–A–21–00–0055–00A–934A–D, ''Material Information,'' of Boeing Alert Service Bulletin B787–81205–SB210055, Issue 001, dated March 12, 2015. UA noted that, as written, the proposed AD suggests that no parts are required.

We do not agree with the commenter's request. In Boeing Alert Service Bulletin B787–81205–SB210055, Issue 001, dated March 12, 2015; Step 3.A., ''Parts Necessary for Each Airplane'' for Groups 1 and 2 airplanes, within data module B787–A–21–00–0055–00A–934A–D, ''Material Information,'' identifies the parts necessary for each airplane that would be supplied by Boeing. Step 3.B. identifies the parts and materials that are supplied by operators. Although having all kit information in one location might provide a single list of parts needed, it could be confusing to determine who is responsible for supplying which parts. Therefore, we have made no change to this AD in this regard.

UA pointed out several instances where Boeing Alert Service Bulletin B787–81205–SB210055, Issue 001, dated March 12, 2015, is referenced for certain sealing and bonding check instructions. UA stated that UTC Aerospace Systems Service Bulletins 7010188–21–6 and 7010189–21–6, both Revision 1, both dated January 30, 2015, refer back to Boeing Alert Service Bulletin B787–81205–SB210055, Issue 001, dated March 12, 2015, which does not provide guidance on how to accomplish these actions. From these

statements, we infer that UA is requesting that we revise the proposed requirements to clarify how these actions are to be accomplished.

We find that clarification is necessary. The Work Instructions in Boeing Alert Service Bulletin B787–81205–SB210055, Issue 001, dated March 12, 2015, specify ''The electrical surface bond and fay seal data is provided in the applicable 787 airplane maintenance manual (AMM) 21–51–19, Cabin Air Compressor—Preparation Before Installation AMMs.'' The instructions are contained within those AMM procedures; however, those steps are not required for compliance with this AD because alternative procedures may be used. Therefore, we have made no change to 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 for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM

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–SB210055–00, Issue 001, dated March 12, 2015. This service information describes procedures for installing modified inboard and outboard CAC modules on the LH side and RH side CACTCS packs. 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.

Costs of Compliance

We estimate that this AD affects 22 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
Modification, installation, and installation test.	Up to 54 work-hours × $85 per hour = $4,590.	$0	Up to $4,590	Up to $100,980.

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, and 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 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):

2016–25–21 The Boeing Company: Amendment 39–18747; Docket No. FAA–2015–7531; Directorate Identifier 2015–NM–052–AD.

(a) Effective Date

This AD is effective January 26, 2017.

(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–SB210055–00, Issue 001, dated March 12, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning.

(e) Unsafe Condition

This AD was prompted by reports of electrical shorts of the motor stator wiring burning a hole through the housing of the motor of the cabin air compressor (CAC). We are issuing this AD to prevent an electrical short from burning through the housing of the motor of the CAC. This condition, in combination with flammable fuel vapors, could result in a fire in the pack bay and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Replacement of CAC Modules

Within 5 years after the effective date of this AD, install modified inboard and outboard CAC modules on the left side and right side cabin air conditioning and temperature control system (CACTCS) packs, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB210055–00, Issue 001, dated March 12, 2015.

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

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

(i) Related Information

For more information about this AD, contact Eric Brown, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6476; fax: 425–917–6590; email: *eric.m.brown@faa.gov*.

(j) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin B787–81205–SB210055–00, Issue 001, dated March 12, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com*.

(4) 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.

(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 December 6, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–30032 Filed 12–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9527; Directorate Identifier 2016–CE–036–AD; Amendment 39–18748; AD 2016–25–22]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Viking Air Limited Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes that supersedes AD 2016–19–08. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion of the elevator control rod and of the elevator actuating lever on the control column, which could cause these components to fail. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective December 22, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 24, 2016 (81 FR 64053, September 19, 2016).

We must receive comments on this AD by February 6, 2017.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this AD, contact Viking Air Limited Technical Support, 1959 De Havilland Way, Sidney, British Columbia, Canada, V8L 5V5; telephone: (North America) (800) 663–8444; fax: (250) 656–0673; email: *technical.support@vikingair.com;* Internet: *http://www.vikingair.com/support/service-bulletins.* 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. It is also available on the Internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2016–9527.

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–2016–9527; 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 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: Aziz Ahmed, Aerospace Engineer, FAA, New

York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7329; fax: (516) 794–5531; email: *aziz.ahmed@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On September 8, 2016, we issued AD 2016–19–08, Amendment 39–18657 (81 FR 64053, September 19, 2016) (''AD 2016–19–08''). That AD required actions intended to address an unsafe condition on all Viking Air Limited (Viking) Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country.

There is a required action in AD 2016–19–08 to insert temporary revisions into the Airworthiness Limitations section of the FAA-approved maintenance program (*e.g.,* maintenance manual). These revisions incorporate repetitive inspections of the elevator control rod assemblies, the elevator actuating lever, and the control column torque tube for corrosion, cracks, and/or other damage.

Viking Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes are not certified under 14 CFR part 23—Airworthiness Standards: Normal, Utility, Acrobatic, and Commuter Category Airplanes and the associated FAA-approved maintenance program (*e.g.,* maintenance manual) does not include an Airworthiness Limitations section. Therefore, the requirement in AD 2016–19–08 to insert Temporary Revision No.: 2–38, dated March 4, 2015, and Temporary Revision No.: 2T–14, dated March 4, 2015, into the Airworthiness Limitations section of the applicable Viking Aircraft DHC–2 Maintenance Manual is not enforceable.

Relative Service Information Under 1 CFR Part 51

We reviewed Viking Air Limited DHC–2 Beaver Service Bulletin Number: V2/0005, Revision 'C', dated July 17, 2015. This service information describes procedures for doing detailed visual inspections of the elevator control rod assemblies, the elevator actuating lever on the control column, and the control column torque tube for corrosion, cracking, and/or other damage. This service bulletin also describes procedures for repairing or replacing damaged parts. 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because the way we addressed the actions in AD 2016–19–18 is unenforceable and the unsafe condition exists and is likely to exist or develop on other products of the same type design. The actions in this AD correct the unenforceability problem.

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 we have already provided public notice on the intent of the actions in this AD. This AD only clarifies the repetitive inspection requirements of AD 2016–19–08 by correcting the means by which the repetitive inspections are done (in the AD versus maintenance manual). Therefore, we determined that notice and opportunity for public comment before issuing this AD are unnecessary.

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–2016–9527; Directorate Identifier 2016–CE–036'' 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 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 AD.

Costs of Compliance

We estimate that this AD will affect 135 products of U.S. registry. We also estimate that it will take about 11.5 work-hours per product to comply with the basic inspection requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the basic inspection requirements of this AD on U.S. operators to be $131,962.50, or $977.50 per product.

In addition, we estimate that any necessary follow-on actions will take about 8 work-hours and require parts costing $1,859, for a cost of $2,539 per product. Contact Viking Air Limited at the address identified in the **ADDRESSES** section of this AD for current pricing and lead time. We have no way of determining the number of products that may need these actions.

There is no estimated cost of compliance difference between this AD and AD 2016–19–08 since there is no change in the number of affected airplanes or in the required actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–18657 (81 FR 64053, September 19, 2016), and adding the following new AD:

2016–25–22 Viking Air Limited: Amendment 39–18748; Docket No. FAA–2016–9527; Directorate Identifier 2016–CE–036–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 22, 2016.

(b) Affected ADs

This AD replaces AD 2016–19–08, Amendment 39–18657 (81 FR 64053, September 19, 2016) (''AD 2016–19–08'').

(c) Applicability

This AD applies to Viking Air Limited Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes, all serial numbers, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion of the elevator control rod and of the elevator actuating lever on the control column. We are issuing this AD to detect and correct corrosion and/or cracking of the elevator control rod assemblies and the elevator actuating lever, which if not detected and corrected, could cause these components to fail. This failure could result in loss of control.

(f) Actions and Compliance

Comply with this AD within the compliance times specified in paragraphs (g) through (m) of this AD, unless already done.

(g) Initial Inspections

Within the next 120 days after October 24, 2016 (the effective date retained from AD 2016–19–08) or within the next 100 hours time-in-service (TIS) after October 24, 2016 (the effective date retained from AD 2016–19–08), whichever occurs first, do the following inspections in accordance with section I. PLANNING INFORMATION, paragraph D. of Viking DHC–2 Beaver Service Bulletin Number: V2/0005, Revision ''C'', dated July 17, 2015:

(1) For airplanes with an installed elevator control rod assembly, part number (P/N) C2CF619A, do a detailed visual inspection of P/N C2CF619A for corrosion, cracking, and/or other damages.

(2) For airplanes with an installed elevator control rod assembly, P/N CT2CF1021–1, do a detailed visual inspection of P/N CT2CF1021–1 for corrosion, cracking, and/or other damages.

(3) For all airplanes, do a detailed visual inspection of the elevator actuating lever on the control column and the control column torque tube for corrosion, cracking and/or other damages.

(h) Repetitive Inspections

After each initial inspection required in paragraph (g) of this AD, at intervals not to exceed 400 hours TIS, repeat each inspection following section I. PLANNING INFORMATION, paragraph D.2. of Viking DHC–2 Beaver Service Bulletin Number: V2/0005, Revision ''C'', dated July 17, 2015.

(i) Replacement/Repair for P/N C2CF619A

(1) If corrosion, cracking, or other damages are found during the initial inspection required in paragraph (g)(1) of this AD or any of the repetitive inspections required in paragraph (h) of this AD, before further flight, replace P/N C2CF619A with P/N C2CF619A–11 following section I. PLANNING INFORMATION, paragraph D. of Viking DHC–2 Beaver Service Bulletin Number: V2/0005, Revision ''C'', dated July 17, 2015, or contact Viking Air Limited at the address specified in paragraph (q)(4) of this AD for an FAA-approved repair and incorporate the repair.

(2) Within the next 120 days after October 24, 2016 (the effective date retained from AD 2016–19–08) or within the next 100 hours TIS after October 24, 2016 (the effective date retained from AD 2016–19–08), whichever occurs first, you may replace P/N C2CF619A with P/N C2CF619A–11 instead of doing the initial inspection required in paragraph (g)(1) of this AD. Do the replacement following section I. PLANNING INFORMATION, paragraph D. of Viking DHC–2 Beaver Service Bulletin Number: V2/0005, Revision ''C'', dated July 17, 2015.

(3) After replacing P/N C2CF619A with P/N C2CF619A–11, you must still do the repetitive inspections of the elevator control rod assemblies as required in paragraph (h) of this AD.

(j) Replacement/Repair for P/N CT2CF1021–1

(1) If corrosion, cracking, or other damages are found during the initial inspection required in paragraph (g)(2) of this AD or any of the repetitive inspections required in paragraph (h) of this AD, before further flight, replace the elevator control rod assembly with P/N CT2CF1021–1 that has been inspected and is free of corrosion, cracking, or other damages following section I. PLANNING INFORMATION, paragraph D. of Viking DHC–2 Beaver Service Bulletin Number: V2/0005, Revision ''C'', dated July 17, 2015, or contact Viking Air Limited at the address specified in paragraph (q)(4) of this AD for an FAA-approved repair and incorporate the repair.

(2) After replacing or repairing P/N CT2CF1021–1, you must still do the repetitive inspections of the elevator control rod assemblies as required in paragraph (h) of this AD.

(k) Repair of the Elevator Actuating Lever

If corrosion, cracking, or other damages are found during the initial inspection required in paragraph (g)(3) of this AD and any of the repetitive inspections required in paragraph (h) of this AD, before further flight, contact Viking Air Limited at the address specified in paragraph (q)(4) of this AD for an FAA-approved repair and incorporate the repair.

(l) Restrictions

As of December 22, 2016 (the effective date of this AD), do not install P/N C2CF619A or C2CF619A–9 as a replacement part.

(m) Life Limit for P/N C2CF619A

As of October 24, 2016 (the effective date retained from AD 2016–19–08), elevator control rod assemblies, P/N C2CF619A, are life-limited to 15 years and must be replaced with P/N C2CF619A–11, which is not a life-limited part, at the following compliance time:

(1) As of October 24, 2016 (the effective date retained from AD 2016–19–08), if the age of the installed P/N C2CF619A is known, it must be replaced before exceeding the life limit or within the next 12 months after October 24, 2016 (the effective date retained from AD 2016–19–08), whichever occurs later.

(2) As of October 24, 2016 (the effective date retained from AD 2016–19–08), if the age of the installed P/N C2CF619A is not known, it must be replaced within the next 12 months after October 24, 2016 (the effective date retained from AD 2016–19–08).

(n) Credit for Actions Accomplished in Accordance With Previous Service Information

Credit will be given for the initial inspections required in paragraphs (g)(1) through (3) of this AD if they were done before October 24, 2016 (the effective date retained from AD 2016–19–08) following Viking Air Limited DHC–2 Beaver Service Bulletin Number: V2/0005, Revision 'NC', dated March 26, 2012; Viking Air Limited DHC–2 Beaver Service Bulletin Number: V2/0005, Revision 'A', dated November 7, 2014; or Viking Air Limited DHC–2 Beaver Service

Bulletin Number: V2/0005, Revision 'B', dated March 4, 2015.

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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. Send information to ATTN: Aziz Ahmed, Aerospace Engineer, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7329; fax: (516) 794–5531; email: *aziz.ahmed@faa.gov.*

(i) Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(ii) AMOCs approved for AD 2016–19–08, Amendment 39–18657 (81 FR 64053, September 19, 2016) are approved as AMOCs for this AD.

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

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

(p) Related Information

Refer to MCAI Transport Canada AD No. CF–2015–21, dated July 30, 2015; Viking Air Limited DHC–2 Beaver Service Bulletin Number: V2/0005, Revision 'NC', dated March 26, 2012; Viking Air Limited DHC–2 Beaver Service Bulletin Number: V2/0005, Revision 'A', dated November 7, 2014; Viking Air Limited DHC–2 Beaver Service Bulletin Number: V2/0005, Revision 'B', dated March 4, 2015; Temporary Revision No.: 2–38, dated March 4, 2015, of VIKING PSM NO.: 1–2–2, AIRCRAFT: DHC–2 BEAVER, SERIES: ALL, PUBLICATION: MAINTENANCE MANUAL; and Temporary Revision No.: 2T–14, dated March 4, 2015, of VIKING PSM NO.: 1–2T–2, AIRCRAFT: DHC–2 TURBO BEAVER, SERIES: ALL, PUBLICATION: MAINTENANCE MANUAL, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9527.

(q) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on October 24, 2016 (81 FR 64053, September 19, 2016).

(i) Viking DHC–2 Beaver Service Bulletin Number: V2/0005, Revision ''C'', dated July 17, 2015.

(ii) Reserved.

(4) For Viking Air Limited service information identified in this AD, contact Viking Air Limited Technical Support, 1959 De Havilland Way, Sidney, British Columbia, Canada, V8L 5V5; Fax: 250–656–0673; telephone: (North America) (800) 663–8444; email: *technical.support@vikingair.com;* Internet: *http://www.vikingair.com/support/service-bulletins.*

(5) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2016–9527.

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

Issued in Kansas City, Missouri on December 8, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–30039 Filed 12–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6894; Directorate Identifier 2015–NM–120–AD; Amendment 39–18729; AD 2016–25–03]

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 certain Airbus Model A300 F4–600R series airplanes. This AD was prompted by a report of two adjacent frame forks that were found cracked on the aft lower deck cargo door (LDCD) of two Model A300–600F4 airplanes during scheduled maintenance. This AD requires repetitive high frequency eddy current (HFEC) inspections of the aft LDCD frame forks; a one-time check of the LDCD clearances; and a one-time detailed visual inspection of hooks, eccentric bushes, and x-stops; and corrective actions if necessary. We are issuing this AD to prevent the unsafe condition on these products.

DATES: This AD is effective January 26, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 26, 2017.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. 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–2016–6894.

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–2016–6894; 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 Office (telephone 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A300 F4–600R series airplanes. The NPRM published in the **Federal Register** on May 31, 2016 (81 FR 34285) (''the NPRM''). The NPRM was prompted by a report of two adjacent frame forks that were found cracked on the aft LDCD of two Model A300–600F4 airplanes during scheduled maintenance. The NPRM proposed to require repetitive HFEC inspections of the aft LDCD frame forks; a one-time check of the LDCD clearances; and a one-time detailed visual inspection of hooks, eccentric bushes, and x-stops; and corrective actions if necessary. We are issuing this AD to detect and correct cracked or ruptured aft LDCD frames, which could allow loads to be transferred to the remaining structural elements.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0152, dated July 24, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A300 F4–605R and A300 F4–622R airplanes. The MCAI states:

During scheduled maintenance at frames (FR) 61 and FR61A on the aft lower deck cargo door (LDCD) of two A300–600F4 aeroplanes, two adjacent frame forks were found cracked.

Subsequent analysis determined that, in case of cracked or ruptured aft cargo door frame(s), loads will be transferred to the remaining structural elements. However, these secondary load paths will be able to sustain the loads for a limited number of flight cycles only.

This condition, if not detected and corrected, could lead to the rupture of one or more vertical aft cargo door frame(s), resulting in reduced structural integrity of the aft cargo door.

To address this unsafe condition, Airbus issued Alert Operators Transmission (AOT) A52W011–15 to provide inspection instructions.

For the reason described above, this [EASA] AD requires repetitive inspections [for cracking] of the aft LDCD frame forks and, depending on findings, the accomplishment of corrective action(s).

This [EASA] AD is considered interim action and further [EASA] AD action may follow.

Required actions include a one-time check of the LDCD clearances and a one-time detailed visual inspection of hooks, eccentric bushes, and x-stops; and corrective actions if necessary. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6894.

Comments

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

Request To Remove Requirements

United Parcel Service (UPS) requested that we remove the requirements of paragraphs (g)(1) and (g)(2) of the proposed AD because the identified work does not contribute to the detection of crack formation.

We do not agree with the request. At this time, Airbus is uncertain of the cause of the cracking; it is possible that the affected aircraft were incorrectly rigged. Incorrect rigging could lead to an improper gap, which could lead to uneven loading on the door frame, thus contributing to the cracking. The actions required by paragraphs (g)(1) and (g)(2) of this AD are performed only one time and are not repeated. No changes have been made to this AD regarding this issue.

Request To Revise Reporting Requirement

UPS requested that we revise the reporting requirement specified in paragraph (i) of the proposed AD. UPS suggested an alternative method for submitting inspection results and indicated the alternative would add flexibility in the reporting method and maintain the intent of the requirement.

We agree, and have revised paragraph (i) of this AD accordingly.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Airbus has issued Alert Operators Transmission (AOT) A52W011–15, Revision 00, including Appendices 1, 2, 3, and 4, dated July 23, 2015. The service information describes procedures for repetitive HFEC inspections for cracking of the aft LDCD frame forks; a one-time check of the LDCD clearances; and a one-time detailed visual inspection of hooks, eccentric bushes, and x-stops; and corrective actions if necessary. 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.

Costs of Compliance

We estimate that this AD affects 58 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	4 work-hours × $85 per hour = $340.	$0	$340 per inspection cycle	$19,720 per inspection cycle.
Reporting	1 work-hour × $85 per hour = $85	0	$85 per inspection cycle	$4,930 per inspection cycle.

We estimate the following costs to do any necessary repairs that will be required based on the results of the required inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	Up to 15 work-hours × $85 per hour = $1,275	Up to $10,000	Up to $11,275.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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):

2016–25–03 Airbus: Amendment 39–18729; Docket No. FAA–2016–6894; Directorate Identifier 2015–NM–120–AD.

(a) Effective Date

This AD is effective January 26, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A300 F4–605R and A300 F4–622R airplanes, certificated in any category, on which Airbus Modification 12046 has been embodied in production. Modification 12046 has been embodied in production on manufacturer serial numbers (MSNs) 0805 and above, except MSNs 0836, 0837, and 0838.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by a report of two adjacent frame forks that were found cracked on the aft lower deck cargo door (LDCD) of two Model A300–600F4 airplanes during scheduled maintenance. We are issuing this AD to detect and correct cracked or ruptured aft LDCD frames, which could allow loads to be transferred to the remaining structural elements. This condition could lead to the rupture of one or more vertical aft LDCD frames, which could result in reduced structural integrity of the aft LDCD.

(f) Compliance

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

(g) Inspection Requirements

At the applicable time specified in paragraph (h) of this AD, do the actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, in accordance with Airbus Alert Operators Transmission (AOT) A52W011–15, Revision 00, dated July 23, 2015.

(1) Do a one-time check of the aft LDCD clearances ''U'' and ''V'' between the latching hooks and the eccentric bush at FR60 through FR64A. If any value outside tolerance is found, adjust the latching hook before further flight.

(2) Do a one-time detailed inspection to detect signs of wear of the hooks, eccentric bushes, and x-stops. If any wear is found, do all applicable corrective actions before further flight.

(3) Do a high frequency eddy current (HFEC) inspection to detect cracking at all frame fork stations of the aft LDCD. If any crack is found, replace the cracked frame fork before further flight. Repeat the HFEC inspection thereafter at intervals not to exceed 600 flight cycles.

(h) Compliance Times

At the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD, do the actions required by paragraph (g) of this AD.

(1) Before the accumulation of 4,500 total flight cycles.

(2) At the applicable time specified by paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) For airplanes that have accumulated 8,000 or more total flight cycles as of the effective date this AD: Within 100 flight cycles after the effective date of this AD.

(ii) For airplanes that have accumulated fewer than 8,000 total flight cycles as of the effective date of this AD: Within 400 flight cycles after the effective date of this AD.

(i) Reporting

At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, report the findings (both positive and negative) of the clearance check and detailed inspection required by paragraphs (g)(1) and (g)(2) of this AD, and each HFEC inspection required by paragraph (g)(3) of this AD. Send the report to Airbus at Airbus Service Bulletin Reporting Online Application on Airbus World (*https://w3.airbus.com/*), or in accordance with paragraph 7 of Airbus AOT A52W011–15, Revision 00, dated July 23, 2015. The report must include the applicable information specified in Appendix 2 of Airbus AOT A52W011–15, Revision 00, dated July 23, 2015.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 60 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 60 days after the effective date of this AD.

(j) Post-Repair Provisions

(1) Accomplishment of corrective actions required by this AD does not terminate the repetitive HFEC inspections required by paragraph (g)(3) of this AD.

(2) If all frame forks are replaced at the same time on the aft LDCD of an airplane, the next HFEC inspection required by paragraph (g)(3) of this AD can be deferred up to 4,500 flight cycles after the frame fork replacement.

(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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(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.

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

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Airworthiness Directive 2015–0152, dated July 24, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6894.

(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 Alert Operators Transmission A52W011–15, Revision 00, dated July 23, 2015, including the following appendices:

(A) Appendix 1—Flowchart, undated.

(B) Appendix 2—Reporting Sheet, undated. (None of the pages of Appendix 2 are numbered.)

(C) Appendix 3—titled ''Technical Disposition,'' Ref. TD/K12/L3/02978/2015, Issue B, dated July 21, 2015. (Appendix 3 is identified with an appendix number only on page 1 of Airbus Alert Operators Transmission A52W011–15, Revision 00, dated July 23, 2015.)

(D) Appendix 4—P/N identification for frame forks and bushings, undated.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on December 7, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–30031 Filed 12–21–16; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 4

Freedom of Information Act; Miscellaneous Rules

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is revising its Rules of Practice governing access to agency records to implement provisions of the FOIA Improvement Act of 2016.

DATES: These amendments are effective December 22, 2016.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Attorney, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–3355.

SUPPLEMENTARY INFORMATION: On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016, Public Law 114–185 (the ''2016 Amendments''), amending the Freedom of Information Act (FOIA), 5 U.S.C. 552. The new law addresses a range of procedural issues, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that they provide dispute resolution services at various times throughout the FOIA process. The 2016 FOIA Amendments also codify the Department of Justice's ''foreseeable harm'' standard, amend FOIA Exemption 5, create a new ''FOIA Council,'' and add two new elements to agency Annual FOIA Reports. Agencies are directed to include procedures in their FOIA regulations for engaging in dispute resolution through agency FOIA Public Liaisons and the National Archives and Records Administration's Office of Government Information Services (OGIS). Finally, the new law requires the head of each agency to review and update their agency's regulations as necessary within 180 days of enactment.

As set out below, this document implements Rule amendments that incorporate the 2016 FOIA Amendments. Pursuant to 5 U.S.C. 553, these changes do not require public

comment because they relate solely to agency practice and procedure.

In a separate document published in today's **Federal Register**, the Commission seeks public comment pursuant to 5 U.S.C. 552(a)(4)(A)(i) on its proposal to amend its Rules of Practice relating to fees charged for obtaining Commission records.

The Public Record (16 CFR 4.9)

The 2016 FOIA Amendments clarified that ''frequently requested'' records include any document that has been requested under FOIA three or more times. 5 U.S.C. 552(a)(2)(D). The Commission is amending Rule 4.9(b)(10)(ix) to incorporate this revised statutory definition of ''frequently requested'' records.

Nonpublic Material (16 CFR 4.10)

The 2016 FOIA Amendments revised FOIA Exemption 5, 5 U.S.C. 552(b)(5), to provide that ''the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.'' [1] The Commission is amending Rule 4.10(a)(3) to incorporate this.

Disclosure Requests (16 CFR 4.11)

The Commission is amending Rule 4.11(a)(1)(i)(A) to update the agency's FOIA Web site address.

The Commission is updating Rule 4.11(a)(1)(i)(D)(1) to assist requesters in providing sufficient contact information to enable the agency to send a response to a FOIA request. A mailing address is generally required although an email address can be sufficient in some instances as determined by the FOIA Office.

The Commission is amending Rule 4.11(a)(1)(ii)(B)(1) to set out the FOIA's precise statutory language of what constitutes an ''unusual circumstance.'' 5 U.S.C. 552(a)(6)(B)(iii).

The 2016 FOIA Amendments require agencies to notify a requester at various stages through the FOIA process of the requester's right to seek dispute resolution services from agency FOIA Public Liaisons and OGIS.[2] Thus, the Commission is amending Rule 4.11(a)(1)(ii)(C), 4.11(a)(1)(iii)(A), and 4.11(a)(2) to incorporate this notice into the agency's regulations.

The 2016 FOIA Amendments also codify the Department of Justice's guidance relating to a foreseeable harm standard. The Amendments prohibit an agency from withholding information requested under FOIA unless the agency reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or the disclosure is prohibited by law. The Commission is amending Rule 4.11(a)(1)(iii)(A) to incorporate this.

The 2016 FOIA Amendments also codify the requirement that agencies shall consider whether partial disclosure of information is possible whenever there is a determination that a full disclosure of a requested record is not possible and take reasonable steps necessary to segregate and release nonexempt information. The obligation to segregate releaseable portions of responsive records was already part of the Commission's pre-existing regulations, in Rule 4.11(a)(1)(iii)(A). However, the language there has been changed to follow the new language from the 2016 FOIA Amendments.

The Commission is amending Rule 4.11(a)(1)(iii)(A) and 4.11(a)(3)(i)(A)(2) to incorporate the new law's mandate that a FOIA requester has the right to file an administrative appeal within a period of time ''that is not less than 90 days after the date of such adverse determination.''

The Commission certifies that the Rule amendments set forth in this notice do not require an initial or final regulatory analysis under the Regulatory Flexibility Act because the amendments will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). Most requests for access to FTC records are filed by individuals who are not ''small entities'' within the meaning of that Act. *Id.* at 601(6). In any event, the economic impact of the Rule changes on all requesters is expected to be minimal, if any, and the Act does not require an analysis for rules that are not subject to the notice-and-comment requirements of the Administrative Procedure Act, as discussed below. The Rule amendments also do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520. Furthermore, the Rule amendments relate solely to agency practice and procedure, and thus are not subject to the notice and comment requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(3)(A).

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of information.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

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

Authority: 15 U.S.C. 46.

■ 2. Amend § 4.9 by revising paragraph (b)(10)(ix) to read as follows:

§ 4.9 The public record.

* * * * *

(b) * * *

(10) * * *

(ix) Records, as determined by the General Counsel or his or her designee, that have been released in response to a request made under the Freedom of Information Act, 5 U.S.C. 552, and which, because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records, or that have been requested three or more times, except where some or all of those records would be exempt from disclosure under 5 U.S.C. 552 if requested by another party;

* * * * *

■ 3. Revise § 4.10(a)(3) to read as follows:

§ 4.10 Nonpublic material.

(a) * * *

(3) Interagency or intra-agency memoranda or letters that would not routinely be available by law to a private party in litigation with the Commission, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records are requested. This exemption preserves the existing freedom of Commission officials and employees to engage in full and frank communication with each other and with officials and employees of other governmental agencies. This exemption includes records of the deliberations of the Commission except for the record of the final votes of each member of the Commission in every agency proceeding. It includes intraagency and interagency reports, memorandums, letters, correspondence, work papers, and minutes of meetings, as well as staff papers prepared for use within the Commission or between the Commission and other governmental agencies. It also includes information scheduled for public release, but as to which premature release would be contrary to the public interest;

* * * * *

■ 4. Amend § 4.11 by revising paragraphs (a)(1)(i)(A), (a)(1)(i)(D)(*1*), (a)(1)(ii)(B)(*1*), (a)(1)(ii)(C), (a)(1)(iii)(A),

[1] *See* 5 U.S.C. 552(b)(5) as amended.

[2] For example, *see* 5 U.S.C. 552 (a)(6)(A)(i)(for adverse determinations) and 5 U.S.C. 552(a)(6)(B)(ii)(for extending time limits by ten days under unusual circumstances).

(a)(2), and (a)(3)(i)(A)(*2*) to read as follows:

§ 4.11 Disclosure requests.

(a) * * * (1) * * * (i) * * * (A) A request under the provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended, for access to Commission records shall be in writing and transmitted by one of the following means: by the form located on the FTC's FOIA Web site, found at *www.ftc.gov*; by email message to the FOIA email account at *foia@ftc.gov*; by facsimile transmission to (202) 326–2477; or by mail to the following address: Freedom of Information Act Request, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

* * * * *

(D) * * * (*1*) A properly filed FOIA request shall reasonably describe the records sought with enough detail to enable the Commission to locate them with a reasonable amount of effort. Whenever possible, the request should include specific information about each record sought such as date, title, name, author, recipient, subject matter of the record, provide information regarding fees pursuant to § 4.8(c), and provide sufficient contact information for a response to be sent. Although a mailing address is generally required, an email address can suffice in some instances. The FOIA Office will consider requests to send responses by email.

* * * * *

(ii) * * *

(B) * * *

(*1*) Necessary to search for and collect the records from field facilities or other establishments that are separate from the office processing the request; or

* * * * *

(C) If the deciding official (as designated by the General Counsel) extends the time limit for initial determination pursuant to paragraph (a)(1)(ii)(B) of this section, the requester will be notified in accordance with 5 U.S.C. 552(a)(6)(B). In exceptional circumstances, when the request cannot be processed within the extended time limit, the requester will be so notified and provided an opportunity to limit the scope of the request so that it may be processed within such time limit, or to arrange an alternative time frame for processing the request or a modified request. In exceptional circumstances, when the request cannot be processed within the extended time limit, the Commission will also make available the agency's FOIA Public Liaison to assist in the resolution of any disputes and notify the requester of the right to seek dispute resolution services from the Office of Government Information Services. ''Exceptional'' circumstances will not include delays resulting from a predictable workload of requests under this section. Unwillingness to make reasonable modifications in the scope of the request or to agree to an alternative time frame may be considered as factors in determining whether exceptional circumstances exist and whether the agency has exercised due diligence in responding to the request.

* * * * *

(iii) * * * (A) The deciding official (as designated by the General Counsel) will make reasonable efforts to search, using either manual or electronic means, for documents that exist as of the date of the receipt of a request for the requested records in electronic form or format, except when such efforts would significantly interfere with the operation of the Commission's automated information systems. The deciding official will only withhold information if the agency reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or disclosure is prohibited by law. The deciding official shall consider whether partial disclosure of information is possible whenever there is a determination that a full disclosure of a requested record is not possible and take reasonable steps necessary to segregate and release nonexempt information. Determination letters to a requester shall include the reasons therefor and the right of such person to seek assistance from the FTC's FOIA Public Liaison. Denials will advise the requester that this determination may be appealed to the General Counsel not more than 90 days after the date of the determination if the requester believes either that the records are not exempt, or that the General Counsel should exercise discretion to release such records notwithstanding their exempt status. The deciding official (as designated by the General Counsel) will also provide a reasonable, good-faith estimate of the volume of any materials to which access is denied, unless providing such an estimate would harm an interest protected by an exemption in 5 U.S.C. 552(b) that was cited as a basis for withholding materials. In the case of an adverse determination, FOIA response letters will notify requesters that they may seek dispute resolution services from the FTC's FOIA Public Liaison or from the Office of Government Information Services.

* * * * *

(2) *FOIA Requester Service Center.* If a requester has questions or comments about the FOIA process, the requester should call the FOIA Requester Service Center at (202) 326–2430 to either speak directly to a FOIA Case Officer or leave a voice message. A requester should also ask the FOIA Case Officer to speak with the FOIA Public Liaison if there are concerns about the quality of the service received, or seek mediation resolution assistance during the FOIA response process.

(3) * * * (i) * * * (A) * * *

(*2*) If an initial request for records is denied in its entirety, the requester may, within 90 days after the adverse determination, appeal such denial to the General Counsel. If an initial request is denied in part, the time for appeal will not expire until 90 days after the date of the final letter notifying the requester that all records to which access has been granted have been made available. In unusual circumstances, the General Counsel or his or her designee may extend the time to appeal.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–30507 Filed 12–21–16; 8:45 am]

BILLING CODE 6750–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 212

RIN 0412–AA89

Freedom of Information Act Regulations

AGENCY: Agency for International Development (USAID).

ACTION: Final rule.

SUMMARY: This regulation prescribes the procedures and standards USAID follows in processing requests for records under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. The Act requires agencies to review their FOIA regulations, and no later than 180 days after enactment, directed the head of each agency to issue regulations on various elements of its FOIA program.

DATES: *Effective:* December 27, 2016.

FOR FURTHER INFORMATION CONTACT: Lynn P. Winston, Bureau for Management, Office of Management Services, Information Records Division, U.S. Agency for International Development, Washington, DC 20523–6601; tel. 202–712–0960, fax: 202–216–3070.

SUPPLEMENTARY INFORMATION:

I. Background

USAID published a proposed rule in the **Federal Register** on September 27, 2016 to amend its Freedom of Information Act Regulations. On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016. The Act requires agencies to review their FOIA regulations, and addresses a range of procedural issues that affect agency FOIA regulations. Among the issues addressed are requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal, and that they provide dispute resolution services at various times throughout the FOIA process. The Act also, among other things, codifies the Department of Justice's ''foreseeable harm'' standard, amends Exemption 5, creates a new ''Chief FOIA Officer Council,'' and adds two new elements to agency Annual FOIA Reports.

II. Summary of Comments and Explanation of Revisions

The proposed rule was published for comment pursuant to the rules proscribed by the **Federal Register**. In total, USAID received comments from four (4) entities. All comments were reviewed and addressed by USAID in the FOIA Regulations final rule. One commenter recommended a minor edit to § 212.19(e)(2). Specifically, that USAID should remove the word ''professional'' from the proposed rule on expedited processing because it is an extra requirement imposed on the public that is not found in the statutory language. This recommendation was adopted to eliminate any extra burden on requesters seeking expedited processing. The same commenter recommended USAID reduce its proposed duplication costs from twenty (20) cents per page to ten (10) cents per page. A review of duplication charges across Federal Government FOIA Offices was conducted, and the recommendation to lower the cost to ten (10) cents was adopted.

A second commenter suggested USAID address the consultation process described in § 212.7(c)(1) to occur only when another agency or government office has a ''substantial interest'' in responsive records or portions thereof. The recommendation was adopted to raise the standard for when a consultation should be initiated. The commenter also suggested USAID edit the definition of a representative of the news media to be any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. USAID reviewed Congress' statutory definition of a ''representative of the news media'' in the OPEN Government Act of 2007, and approved the comment by applying the more recent definition.

The third commenter recommended USAID remove Subpart E (Exemptions & Exclusions section) because application of exemptions may evolve based on case law. USAID agreed and removed Subpart E from the FOIA Regulations. The commenter recommended editing § 212.19(b) to note that request track placement depends on the amount of time and/or work needed to process the request. Specifically highlighting that the Agency designates a specific track for requests granted expedited processing. USAID approved the recommendation. The commenter suggested USAID update § 212.19(c) to add language on the Agency's FOIA Public Liaison duties, and update § 212.23 to include information on the Office of Government Information Services' (OGIS) mission to provide mediation between requesters and agencies, while serving as a non-exclusive alternative to litigation. USAID updated the sections to clarify that the Agency must make available its FOIA Public Liaison when an extension for unusual circumstances exceeds 10 days, and detailed OGIS' role in the mediation process. The commenter also recommended USAID update the definition of an educational institution in § 212.25(b)(4). Based on new case law, USAID revamped the language to account for the expanded definition.

The fourth commenter echoed the recommendations provided by the third commenter regarding language needed on the role of the FOIA Public Liaison and OGIS mediation, as well as the new definition for an educational institution. All comments were approved and applied by USAID.

List of Subjects in 22 CFR Part 212

Freedom of information.

■ For the reasons stated in the preamble, USAID revises 22 CFR part 212 to read as follows:

PART 212—PUBLIC INFORMATION

Subpart A—General Provisions

212.1 Purpose and scope.
212.2 Policy.
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Authority: Pub. L. 114–185, 130 Stat. 538.

Subpart A—General Provisions

§ 212.1 Purpose and scope.

This subpart contains the rules that the United States Agency of International Development (hereinafter ''USAID'' or ''the Agency'') follows in processing requests for records under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. The rules in this subpart should be read in conjunction with the text of the FOIA. Requests made by individuals for records about themselves under the Privacy Act of 1974, are processed under Subpart O. Definitions of FOIA terms are referenced in Subpart L.

§ 212.2 Policy.

(a) As a general policy, USAID follows a balanced approach in administering the FOIA. USAID recognizes the right of the public to access information in the

possession of the Agency. USAID also recognizes the legitimate interests of organizations or persons who have submitted records to the Agency or who would otherwise be affected by release of records. USAID has no discretion to release certain records, such as trade secrets and confidential commercial information, prohibited from release by law. USAID's policy calls for the fullest responsible disclosure consistent with those requirements of administrative necessity and confidentiality which are recognized under the FOIA.

(b) *Definitions.* For purposes of subparts A through K, M, and O of this part, *record* means information regardless of its physical form or characteristics including information created, stored, and retrievable by electronic means that is created or obtained by the Agency and under the control of the Agency at the time of the request, including information maintained for the Agency by an entity under Government contract for records management purposes. It does not include records that are not already in existence and that would have to be created specifically to respond to a request. Information available in electronic form shall be searched and compiled in response to a request unless such search and compilation would significantly interfere with the operation of the Agency's automated information systems.

§ 212.3 Records available on the Agency's Web site.

Information that is required to be published in the **Federal Register** under 5 U.S.C. 552(a)(1) is regularly updated by the Agency and found on its public Web site: *www.usaid.gov/foia-requests.* Records that are required by the FOIA to be made available for public inspection in an electronic format under 5 U.S.C. 552(a)(2) also are available on the Agency's public Web site.

Subpart B—Proactive Disclosures of Agency Records

§ 212.4 Materials available for public inspection and in electronic format.

(a) In accordance with this subpart, the Agency shall make the following materials available for public inspection in an electronic format:

(1) Operational policy in USAID's Automated Directives System (ADS) which have been adopted by the Agency and are not published in the **Federal Register**;

(2) Administrative staff manuals and instructions to staff that affect any member of the public; and

(3) Copies of all records, regardless of form or format, which have been released pursuant to a FOIA request, and which have been requested three (3) or more times, or because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. The Agency shall decide on a case by case basis whether records fall into this category, based on the following factors:

(i) Previous experience with similar records;

(ii) The particular characteristics of the records involved, including their nature and the type of information contained in them; and

(iii) The identity and number of requesters and whether there is widespread media, historical, academic, or commercial interest in the records.

Subpart C—Requirements for Making Requests

§ 212.5 How to make a request for records.

(a) *General information.* USAID has a centralized system for responding to FOIA requests. The Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD) is the central processing point for requests for USAID records contained in Washington, DC and its overseas missions. All FOIA requests must be submitted to this office. To make a request for the Agency's records, a requester may send request via one of the following mediums:

(1) *By Email: foia@usaid.gov.* Please include your mailing address, email address and phone number with your request. While our FOIA Specialists are happy to answer questions about the FOIA Program and/or help you formulate your request over the phone, please be advised that FOIA requests cannot accept by phone.

(2) *Online Portal:* To submit your request online, please click the subsequent link: *https://foiarequest.usaid.gov/index.aspx.*

(3) *By U.S. Postal Mail:* United States Agency of International Development Bureau for Management, Office of Management Services ≤Services, Information and Records Division, 1300 Pennsylvania Avenue NW., Washington, DC 20523–2701, Room 2.7C RRB, (202) 712–0960.

(4) *By Fax:* (202) 216–3070.

(b) *Third party requests.* Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in the FOIA by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (*e.g.,* a copy of a death certificate or an obituary). In addition, requesters may demonstrate an overriding public interest in disclosure of the information related to official misconduct by producing evidence that alleged Government impropriety occurred. As an exercise of administrative discretion, the agency can require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(c) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable the Agency's personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. In general, requesters should include as much detail as possible about the specific records or the types of records that they are seeking. Before submitting their requests, requesters may contact the Agency's FOIA contact or FOIA Public Liaison to discuss the records they are seeking and to receive assistance in describing the records. If, after receiving a request and the Agency determines that it does not reasonably describe the records sought, the Agency shall inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the Agency's designated FOIA Specialist or its FOIA Public Liaison, each of whom is available to assist the requester in reasonably describing the records sought. If a request does not reasonably describe the records sought, the Agency's response to the request may be delayed or denied.

Subpart D—Responsibility for Responding to Requests

§ 212.6 Designation of authorized officials.

(a) The Assistant Administrator for the Bureau for Management (M) serves as the USAID Chief FOIA Officer. The Chief FOIA Officer has overall responsibility for USAID compliance with the FOIA. The Chief FOIA Officer provides high level oversight and support to USAID's FOIA programs, and recommends adjustments to agency practices, personnel, and funding as may be necessary to improve FOIA

administration, including through an annual Chief FOIA Officers Report submitted to the U.S. Department of Justice. The Chief FOIA Officer is responsible for offering training to agency staff regarding their FOIA responsibilities; serves as the primary liaison with the Office of Government Information Services and the Office of Information Policy; and reviews, not less frequently than annually, all aspects of the Agency's administration of the FOIA to ensure compliance with the FOIA's requirements.

(b) The Bureau for Management, Office of Management Services, Information Records Division (M/MS/IRD) is the centralized FOIA office that receives, tracks, and processes all of USAID's FOIA requests to ensure transparency within the Agency.

(c) The Director, Bureau for Management, Office of Management Services (M/MS/OD) serves as the USAID FOIA Appeals Officer. The FOIA Appeals Officer is responsible for receiving and acting upon appeals from requesters whose initial FOIA requests for USAID records have been denied, in whole or in part.

(d) The Chief, Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD) serves as USAID's FOIA Officer and FOIA Public Liaison. The FOIA Officer is responsible for program direction, original denials, and policy decisions required for effective implementation of USAID's FOIA program. The FOIA Public Liaison serves as a supervisory official to whom a FOIA requester can raise concerns about the services received, following an initial response from the FOIA staff. In addition, the FOIA Public Liaison assists, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes.

(e) The FOIA Team Leader is the Principal Operations Officer within USAID for the processing of FOIA requests and release determinations.

(f) The FOIA Specialist also known as the Government Information Specialist (GIS) is responsible for processing requests and preparing records for release when such releases are authorized by the FOIA. They do not have the authority to make denials, including ''no records'' responses.

(g) The General Counsel (GC), FOIA Backstop Attorney Advisor has responsibility for providing legal advice on all USAID matters regarding or resulting from the FOIA. Upon request, GC advises M/MS/IRD on release and denial decisions, and apprises the FOIA Office of all significant developments with respect to the FOIA.

(h) Each Attorney Advisor designated to provide legal advice to USAID Bureaus/Independent Offices (B/IOs) is responsible for providing, at M/MS/IRD's request, legal advice on FOIA requests assigned to those B/IOs.

(i) The designated FOIA Liaison Officer (FLO) in each USAID Bureau and Office is responsible for tasking and facilitating the collection of responsive records and monitoring the production of records to M/MS/IRD.

§ 212.7 Processing of request.

(a) *In general.* In determining which records are responsive to a request, the Agency ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the Agency shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The FOIA Officer is authorized to grant or to deny any requests for records that are maintained by the Agency.

(c) *Consultation, referral, and coordination.* When reviewing records located by the Agency in response to a request, USAID shall determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. All consultations and referrals received by the Agency will be handled according to the date that the first agency received the perfected FOIA request. As to any such record, USAID shall proceed in one of the following ways:

(1) *Consultation.* When records originated with USAID, but contain within them information of substantial interest to another agency, or other Federal Government office, USAID should consult with that other agency prior to making a release determination.

(2) *Referral.* (i) When USAID believes that a different agency, or other Federal Government office is best able to determine whether to disclose the record, USAID should refer the responsibility for responding to the request regarding that record, as long as the referral is to an agency that is subject to the FOIA. Ordinarily, the agency that originated the record will be presumed to be best able to make the disclosure determination. However, if USAID and the originating agency jointly agree that the former is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever USAID refers any part of the responsibility for responding to a request to another agency, it shall document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. In such instances, in order to avoid harm to an interest protected by an applicable exemption, USAID will coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination will then be conveyed to the requester by USAID.

(d) *Classified information.* On receipt of any request involving classified information, USAID must determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records, the USAID must refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever USAID's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), USAID must refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(e) *Furnishing records.* USAID shall furnish copies only of records that the Agency has in its possession. The Agency is not compelled to create new records. The Agency is not required to perform research for a requester. The Agency is required to furnish only one copy of a record. If information exists in different forms, the Agency will provide the record in the form that best conserves government resources. Requests may specify the preferred form or format (including electronic formats) for the records sought by the requester. USAID will accommodate the form or format request if the record is readily reproducible in that form or format.

(f) *Archival records.* The Agency ordinarily transfers records in

accordance with its retirement authority, included in ADS 502, to the National Archives. These records become the physical and legal custody of the National Archives. Accordingly, requests for retired Agency records should be submitted to the National Archives by mail addressed to Special Access and FOIA Staff (NWCTF), 8601 Adelphi Road, Room 5500, College Park, MD 20740; by fax to (301) 837–1864; or by email to *specialaccess_foia@nara.gov.*

(g) *Poor copy.* If USAID cannot make a legible copy of a record to be released, the Agency is not required to reconstruct it. Instead, the Agency will furnish the best copy possible and note its poor quality in the Agency's reply.

Subpart E—Timing of Responses to Requests

§ 212.8 Time limits.

(a) *In general.* The Agency ordinarily will respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) USAID shall designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. The Agency may designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors the Agency may consider are, the number of pages involved in processing the request and the need for consultations or referrals. The Agency shall advise requesters of the track into which their request falls and, when appropriate, shall offer the requesters an opportunity to narrow their request so that it can be placed in a different processing track.

(2) The Agency shall generally process requests in each track on a ''first-in, first-out'' basis.

(c) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of ''unusual circumstances,'' as defined in the FOIA, and the Agency extends the time limit on that basis, the Agency shall, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds 10 working days, the Agency shall, in the written notice, notify the requester of the right to contact the Agency's FOIA Public Liaison, or seek dispute resolution services from the Office of Government Information Services (OGIS). In addition, the Agency shall, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing.

(d) *Aggregating requests.* For the purposes of satisfying unusual circumstances under the FOIA, the Agency may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. The Agency shall not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

(2) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ''urgency to inform'' the public on the topic. As a matter of administrative discretion, the Agency may waive the formal certification requirement.

(3) The Agency shall notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

Subpart F—Responses to Requests

§ 212.9 Responsibility for responding to requests.

(a) *In general.* USAID should, to the extent practicable, communicate with requesters having access to the Internet using electronic means, such as email or web portal.

(b) *Acknowledgments of requests.* USAID shall acknowledge the request and assign it an individualized tracking number. The Agency shall include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Grants of requests.* Once the Agency makes a determination to grant a request in full or in part, it shall notify the requester in writing. The Agency also shall inform the requester of any fees charged and shall disclose the requested records to the requester promptly upon payment of any applicable fees.

(d) *Consultations and Referrals.* Whenever USAID consults with another Federal Government office over the releasability of a record, the Agency shall notify the requester of the consultation and inform the requester of the name(s) of the agency or office with which the consultation is taking place. Whenever USAID refers any part of the responsibility for responding to a request to another Federal Government office, the Agency shall document the referral, maintain a copy of the record that it refers, notify the requester of the referral, and inform the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(e) *Adverse determinations of requests.* If the Agency has made an adverse determination denying a request in any respect, the Agency shall notify the requester of that determination in writing, and provide the contact information for the FOIA Public Liaison, as well as a description of the requester's right to seek mediation services from the Office of Government Information Services (OGIS). Adverse determinations, or denials of requests, include decisions that: The requested record is exempt, in whole or in part;

the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. A response will provide an estimate of the volume of any records or any information withheld. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(f) *Information furnished.* All denials are in writing and describe in general terms the material withheld; state the reasons for the denial, including, as applicable, a reference to the specific exemption of the FOIA authorizing the withholding; explain your right to appeal the decision and identify the official to whom you should send the appeal; and are signed by the person who made the decision to deny all or part of the request. Records disclosed in part must be marked clearly to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted must also be indicated on the record, if technically feasible.

(g) *Conducting searches.* USAID performs a diligent search for records to satisfy your request. Nevertheless, the Agency may not be able to find the records requested using the information provided, or the records may not exist.

Subpart G—Confidential Commercial Information

§ 212.10 Policy and procedure.

(a) *Definitions.* (1) *Confidential commercial information* means commercial or financial information obtained by the Agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Business submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides information, either directly or indirectly to the Federal Government.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations shall expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to business submitters is required.* (1) The Agency shall promptly provide written notice to a business submitter of confidential commercial information whenever records containing such information are requested under the FOIA if, after reviewing the request, the responsive records, and any appeal by the requester, the Agency determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the business submitter as information considered protected from disclosure under Exemption 4; or

(ii) The Agency has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure under that exemption or any other applicable exemption.

(2) The notice shall either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(d) *Exceptions to business submitter notice requirements.* The notice requirements of this section shall not apply if:

(1) The Agency determines that the information is exempt under the FOIA;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the business submitter appears obviously frivolous, except that, in such a case, the Agency shall give the business submitter written notice of any final decision to disclose the information and must provide that notice within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.* (1) The Agency shall specify a reasonable time period within which the business submitter must respond to the notice referenced above. If a business submitter has any objections to disclosure, the business submitter should:

(i) Provide the Agency with a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the business submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential.

(ii) [Reserved]

(2) A business submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. Information received by the Agency after the date of any disclosure decision shall not be considered by the Agency. Any information provided by a business submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* The Agency shall consider a business submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* Whenever the Agency decides to disclose information over the objection of a business submitter, the Agency shall provide the business submitter written notice, which shall include:

(1) A statement of the reasons why each of the business submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the Agency shall promptly notify the business submitter.

(i) *Requester notification.* The Agency shall notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

Subpart H—Administrative Appeals

§ 212.11 Appeal procedures.

USAID must inform the requester of the reasons for the denial and the requester's right to appeal the denial to the FOIA Appeals Officer whenever a FOIA request is denied.

(a) *What a requester can appeal.* A requester may appeal the withholding of a document or denial of a fee waiver request. A requester may contest the type or amount of fees that were charged, or may appeal any other type of adverse determination under the FOIA. A requester may also appeal because USAID failed to conduct an adequate search for the documents requested. However, a requester may not file an administrative appeal for the lack of a timely response. A requester may administratively appeal any portion denied when their request is granted in part and denied in part.

(b) *Requirements for making an appeal.* A requester may appeal any adverse determinations to USAID. The requester must make the appeal in writing. To be considered timely, the appeal must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the response. The appeal should clearly identify the Agency's determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, ''Freedom of Information Act Appeal.''

(c) *Adjudication of appeals.* (1) The Director of the Bureau for Management Services or designee will conduct de novo review and make the final determination on the appeals.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(d) *Decisions on appeals.* A decision on an appeal must be made in writing. A decision that upholds the Agency's determination will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation. Mediation is a voluntary process. If USAID agrees to participate in the mediation services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute. If the Agency's decision is remanded or modified on appeal, the requester will be notified of that determination in writing. The Agency will thereafter further process the request in accordance with that appeal determination and respond directly to the requester.

(e) *When appeal is required.* Before seeking review by a court of the Agency's adverse determination, a requester generally must first submit a timely administrative appeal.

(f) *Where to file an appeal.* An appeal may be filed by sending a letter to: FOIA Appeals Officer, Bureau for Management Director, Office of Management Services, U.S. Agency for International Development Room 2.12–010, RRB, Washington, DC 20523–4601. There is no charge for filing an administrative appeal.

§ 212.12 Mediation and dispute services.

The Office of Government Information Services of the National Archives and Records Administration (OGIS) is a Freedom of Information Act (FOIA) resource for the public and the government. Congress has charged OGIS with reviewing FOIA policies, procedures and compliance of Federal agencies and to recommend changes to the FOIA. OGIS' mission also includes providing dispute resolution services between Federal agencies and requesters. OGIS works as a non-exclusive alternative to litigation.'' When USAID makes a determination on a request, the Agency shall offer the services of the FOIA Public Liaison, and will notify requesters of the mediation services provided by OGIS. Specifically, USAID will include in the Agency's notification to the requester;

(a) The right of the requester to seek assistance from the FOIA Public Liaison of the Agency, and in the case of an adverse determination;

(b) The right of the requester to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services.

Subpart I—Preservation of Records

§ 212.13 Policy and procedures.

The Agency shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code, and appropriate records disposition authority granted by NARA. Under no circumstances shall records be sent to a Federal Records Center, transferred to the permanent custody of NARA, or destroyed while they are the subject of a pending request, appeal, or civil action under the FOIA.

Subpart J—Fees

§ 212.14 Fees to be charged—general.

(a) *In general.* USAID shall charge for processing requests under the FOIA in accordance with the provisions of this section and with the Office of Management and Budget (OMB) Guidelines. In order to resolve any fee issues that arise under this section, the Agency may contact a requester for additional information. The Agency shall ensure that search, review, and duplication are conducted in the most efficient and the least expensive manner. USAID ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Agency's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information.

(2) *Direct costs* are those expenses that the Agency incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) *Duplication* is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. Agencies may seek verification from the requester that the request is in furtherance of scholarly research.

(5) *Fee waiver* is a waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied, including that the information is in the public interest and is not requested for a commercial interest.

(6) *Noncommercial scientific institution* is an institution that is not operated on a ''commercial'' basis, as defined in paragraph (b)(1) of this

section and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

(7) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast ''news'' to the public at large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester's past publication record in making this determination.

(8) *Requester category* is one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review, and duplication. The three categories are: Commercial requesters; non-commercial scientific or educational institutions or news media requesters; and all other requesters.

(9) *Review* is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(10) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Charging fees.* In responding to FOIA requests, the Agency shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section.

(1) *Search.* Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. Search fees shall be charged for all other requesters, subject to the restrictions of paragraph (d) of this section. The Agency may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(2) *Duplication.* Duplication fees shall be charged to all requesters, subject to the restrictions of paragraph (d) of this section. The Agency shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the agency in the form or format requested. Where photocopies are supplied, the Agency shall provide one copy per request at a cost of ten cents per page. For copies of records produced on tapes, disks, or other media, the direct costs of producing the copy, including operator time shall be charged. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, the Agency shall charge the direct costs.

(3) *Review.* Review fees shall be charged to requesters who make commercial use requests. Review fees shall be assessed in connection with the initial review of the record, *i.e.,* the review conducted by the agency to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with the Agency re-review of the records in order to consider the use of other exemptions may be assessed as review fees.

(d) *Restrictions on charging fees.* (1) No search fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media, unless the records are sought for commercial use.

(2) When the Agency determines that unusual circumstances apply to the processing of a request, and the Agency has provided timely written notice to the requester, the delay is excused for an additional 10 days. If the Agency fails to comply with the extended time limit, it may not charge search fees (or for requesters with preferred fee status, may not charge duplication fees) except as provided in paragraphs (d)(2)(i)–(ii) of this section.

(i) *Exception:* If unusual circumstances apply and more than 5000 pages are necessary to respond to the request, the Agency may charge search fees (or, for requesters in preferred fee status, may charge duplication fees) if timely written notice has been made to the requester and the Agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(ii) *Court determination that exceptional circumstances exist:* If a court determines that exceptional circumstances exist, the Agency's failure to comply with a time limit shall be excused for the length of time provided by the court order.

(3) If the Agency fails to comply with the time limits in which to respond to a request, and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees.

(4) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(5) Except for requesters seeking records for a commercial use, the Agency shall provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(6) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under paragraph (c) of this section is $25.00 or less for any request, no fee will be charged.

(e) *Notice of anticipated fees in excess of $25.00.* (1) When the Agency determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, the Agency shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the agency shall advise the requester accordingly. If the requester is a noncommercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and shall advise the requester whether those entitlements have been provided.

(2) In cases in which a requester has been notified that the actual or estimated fees are in excess of $25.00, the request shall not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. The Agency is not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the Agency estimates that the total fee will exceed that amount, the Agency shall toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Agency shall inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The Agency shall make available their FOIA Public Liaison or other FOIA Specialists to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if the Agency chooses to do so as a matter of administrative discretion, the direct costs of providing the service shall be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* The Agency may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the agency. The Agency shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* When the Agency reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the Agency may aggregate those requests and charge accordingly. The Agency may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, the Agency will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters shall not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) or (i)(3) of this section, the agency shall not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.,* payment before copies are sent to a requester) is not an advance payment.

(2) When the Agency determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The Agency may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to the agency within 30 calendar days of the billing date, the Agency may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the Agency may require that the requester make an advance payment of the full amount of any anticipated fee before the Agency begins to process a new request or continues to process a pending request or any pending appeal. If the Agency has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which the Agency requires advance payment, the request shall not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the Agency's fee determination, the request will be closed.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the Agency shall inform the requester of the contact information for that program.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charge or at a reduced rate below the rate established under paragraph (c) of this section, where the Agency determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government, the Agency shall consider all four of the following factors:

(i) The subject of the request must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government

operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, the Agency shall not make value judgments about whether the information at issue is ''important'' enough to be made public.

(3) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Agency shall consider the following factors:

(i) The Agency shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure. The Agency ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Agency and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received. A requester may appeal the denial of a fee waiver.

§ 212.15 Fees to be charged—requester categories.

(a) The following specific fees are charged for services rendered:

(1) Commercial Use:

Search: $40.00 per hour

Search costs will be assessed even though no records may be found or even if, after review, there is no disclosure or records.

Review: $55.00 per hour.

Duplication: 10¢ per page.

(2) Educational & Non-Commercial Scientific Institutions.

Search: No fee.

Review: No fee.

Duplication: 10¢ per page after the first 100 pages.

(3) Representatives of the News Media.

Search: No fee.

Review: No fee.

Duplication: 10¢ per page after the first 100 pages.

(4) All Others.

Search: Same as ''Commercial Users'' except the first two hours shall be furnished without charge.

Review: No fee.

Duplication: 10¢ per page after the first 100 pages.

(b) If copies of records are provided in other than paper format (such as on microfiche, video tape, or as electronic data files), or other than first-class mail is requested or required, the requester is charged the actual cost of providing these additional services.

Subpart K—FOIA Definitions

§ 212.16 Glossary.

As used in this part:

Administrative FOIA Appeal is an independent review of the initial determination made in response to a FOIA request. Requesters who are dissatisfied with the response made on their initial request have a statutory right to appeal the initial determination made by the Agency.

Agency is any executive agency, military agency, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Thus, USAID is an agency.

Complex request is a request that typically seeks a high volume of material or requires additional steps to process such as the need to search for records in multiple locations.

Consultation is when USAID locates a record that contains information of substantial interest to another agency, and USAID asks for the views of that other agency on the disclosablity of the records before any final determination is made.

Discretionary disclosure is information that the Agency releases even though it could have been withheld under one of the FOIA's exemptions.

Duplication is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

Electronic record is any information that is recorded in a form that only a computer can process and that satisfies the definition of a Federal record per the Federal Records Act. Federal electronic records are not necessarily kept in a ''recordkeeping system'' but may reside in a generic electronic information system or are produced by an application such as word processing or electronic mail.

Exemptions are nine categories of information that are not required to be released in response to a FOIA request because release would be harmful to a government or private interest. These categories are called ''exemptions'' from disclosures.

Expedited processing is the FOIA response track granted in certain limited situations, specifically when a FOIA request is processed ahead of other pending requests.

Freedom of Information Act or FOIA is a United States federal law that grants the public access to information possessed by government agencies. Upon written request, U.S. government agencies are required to release information unless it falls under one of nine exemptions listed in the Act.

Frequently requested records are records that have been requested three (3) or more times from the Agency.

Multi-track processing is a system that divides in-coming FOIA requests according to their complexity so that simple requests requiring relatively minimal review are placed in one processing track and more complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.

Office of Government Information Services (OGIS) offers mediation services to resolve disputes between

FOIA requesters and agencies as an alternative to litigation. OGIS also reviews agency FOIA compliance, policies, and procedures and makes recommendations for improvement. The Office is a part of the National Archives and Records Administration, and was created by Congress as part of the OPEN Government Act of 2007, which amended the FOIA.

Proactive disclosures are records made publicly available by agencies without waiting for a specific FOIA request. Agencies now post on their Web sites material concerning their functions and mission. The FOIA itself requires agencies to make available certain categories of information, including final opinions and orders, specific policy statements, certain administrative staff manuals and frequently requested records.

Record means information regardless of its physical form or characteristics including information created, stored, and retrievable by electronic means that is created or obtained by the Agency and under the control of the Agency at the time of the request, including information maintained for the Agency by an entity under Government contract for records management purposes. It does not include records that are not already in existence and that would have to be created specifically to respond to a request. Information available in electronic form shall be searched and compiled in response to a request unless such search and compilation would significantly interfere with the operation of the Agency's automated information systems.

Referral occurs when an agency locates a record that originated with, or is of otherwise primary interest to another agency. It will forward that record to the other agency to process the record and to provide the final determination directly to the requester.

Simple request is a FOIA request that an agency anticipates will involve a small volume of material or which will be able to be processed relatively quickly.

Subpart L—Other Rights and Services

§ 212.17 Rights and services qualified by the FOIA statute.

Nothing in this subpart shall be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart M—Privacy Act Provisions

§ 212.18 Purpose and scope.

This subpart contains the rules that the USAID follows under the Privacy Act of 1974 (PA), 5 U.S.C. 552a, as amended. These rules should be read together with the text of the statute, which provides additional information about records maintained on individuals. The rules in this subpart apply to all records in systems of records maintained by the agency that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the agency. If any records retrieved pursuant to an access request under the PA are found to be exempt from access under that Act, they will be processed for possible disclosure under the FOIA, as amended. No fees shall be charged for access to or amendment of PA records.

§ 212.19 Privacy definitions.

As used in this subpart, the following definitions shall apply:

(a) Individual means a citizen or a legal permanent resident alien (LPR) of the United States.

(b) Maintain includes maintain, collect, use, or disseminate.

(c) Record means any item, collection, or grouping of information about an individual that is maintained by the agency and that contains the individual's name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

(d) System of records means a group of any records under the control of the agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

§ 212.20 Request for access to records.

(a) *In general.* Requests for access to records under the PA must be made in writing and mailed to the Bureau for Management Services, Information and Records Division at the address given in § 212.7.

(b) *Description of records sought.* Requests for access should describe the requested record(s) in sufficient detail to permit identification of the record(s). At a minimum, requests should include the individual's full name (including maiden name, if appropriate) and any other names used, current complete mailing address, and date and place of birth (city, state and country). Helpful data includes the approximate time period of the record and the circumstances that give the individual reason to believe that the agency maintains a record under the individual's name or personal identifier, and, if known, the system of records in which the record is maintained. In certain instances, it may be necessary for the Agency to request additional information from the requester, either to ensure a full search, or to ensure that a record retrieved does in fact pertain to the individual.

(c) *Verification of personal identity.* The Agency will require reasonable identification of individuals requesting records about themselves under the PA's access provisions to ensure that records are only accessed by the proper persons. Requesters must state their full name, current address, citizenship or legal permanent resident alien status, and date and place of birth (city, state, and country). The request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746. If the requester seeks records under another name the requester has used, a statement, under penalty of perjury, that the requester has also used the other name must be included.

(d) *Authorized third party access.* The Agency shall process all properly authorized third party requests, as described in this section, under the PA. In the absence of proper authorization from the individual to whom the records pertain, the Agency will process third party requests under the FOIA. The Agency's form, AID 507–1, may be used to certify the identity and provide third party authorization.

(1) *Parents and guardians of minor children.* Upon presentation of acceptable documentation of the parental or guardian relationship, a parent or guardian of a U.S. citizen or LPR minor (an unmarried person under the age of 18) may, on behalf of the minor, request records under the PA pertaining to the minor. In any case, U.S. citizen or LPR minors may request such records on their own behalf.

(2) *Guardians.* A guardian of an individual who has been declared by a court to be incompetent may act for and on behalf of the incompetent individual upon presentation of appropriate documentation of the guardian relationship.

(3) *Authorized representatives or designees.* When an individual wishes to authorize another person or persons access to his or her records, the individual may submit, in addition to

the identity verification information described in paragraph (c) or paragraph (d) of this section. The designated third party must submit identity verification information described in paragraph (c).

(e) *Referrals and consultations.* If the Agency determines that records retrieved as responsive to the request were created by another agency, it ordinarily will refer the records to the originating agency for direct response to the requester. If the agency determines that records retrieved as responsive to the request are of interest to another agency, it may consult with the other agency before responding to the request. The Agency may make agreements with other agencies to eliminate the need for consultations or referrals for particular types of records.

(f) *Records relating to civil actions.* Nothing in this subpart entitles an individual to access to any information compiled in reasonable anticipation of a civil action or proceeding.

(g) *Time limits.* The Agency will acknowledge the request promptly and furnish the requested information as soon as possible thereafter.

§ 212.21 Request to amend or correct records.

(a) An individual has the right to request that the Agency amend a record pertaining to the individual that the individual believes is not accurate, relevant, timely, or complete.

(b) Requests to amend records must be in writing and mailed or delivered to the Bureau for Management, Management Services, Information Records Division at the address given in § 212.7, with ATTENTION: PRIVACY ACT AMENDMENT REQUEST written on the envelope. IRD will coordinate the review of the request with the appropriate offices of the Agency. The Agency will require verification of personal identity before it will initiate action to amend a record. Amendment requests should contain, at a minimum, identifying information needed to locate the record in question, a description of the specific correction requested, and an explanation of why the existing record is not accurate, relevant, timely, or complete. The request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746. The requester should submit as much pertinent documentation, other information, and explanation as possible to support the request for amendment.

(c) All requests for amendments to records shall be acknowledged within 10 working days.

(d) In reviewing a record in response to a request to amend, the Agency shall review the record to determine if it is accurate, relevant, timely, and complete.

(e) If the Agency agrees with an individual's request to amend a record, it shall:

(1) Advise the individual in writing of its decision;

(2) Amend the record accordingly; and

(3) If an accounting of disclosure has been made, advise all previous recipients of the record of the amendment and its substance.

(f) If the Agency denies an individual's request to amend a record, it shall advise the individual in writing of its decision and the reason for the refusal, and the procedures for the individual to request further review. See § 171.25 of this chapter.

§ 212.22 Appeals from denials of PA amendment requests.

(a) *How made.* Except where accountings of disclosures are not required to be kept, as set forth in paragraph (b) of this section, or where accountings of disclosures do not need to be provided to a requesting individual pursuant to 5 U.S.C. 552a(c)(3), an individual has a right to request an accounting of any disclosure that the Agency has made to another person, organization, or agency of any record about an individual. This accounting shall contain the date, nature, and purpose of each disclosure as well as the name and address of the recipient of the disclosure. Any request for accounting should identify each particular record in question and may be made by writing directly to the Appeals Officer, Bureau for Management, Office of Management Services at the address given in § 212.19.

(b) *Where accountings not required.* The Agency is not required to keep an accounting of disclosures in the case of:

(1) Disclosures made to employees within the Agency who have a need for the record in the performance of their duties; and

(2) Disclosures required under the FOIA.

§ 212.23 Request for accounting of record disclosures.

(a) If the Agency denies a request for amendment of such records, the requester shall be informed of the reason for the denial and of the right to appeal the denial to the Appeals Review Panel. Any such appeal must be postmarked within 60 working days of the date of the Agency's denial letter and sent to: Appeals Officer, Bureau for Management, Office of Management Services at the address given in § 212.19.

(b) Appellants should submit an administrative appeal of any denial, in whole or in part, of a request for access to the PA at the above address. The Agency will assign a tracking number to the appeal.

(c) The Appeals Review Panel will decide appeals from denials of PA amendment requests within 30 business days, unless the Panel extends that period for good cause shown, from the date when it is received by the Panel.

(d) Appeals Review Panel decisions will be made in writing, and appellants will receive notification of the decision. A reversal will result in reprocessing of the request in accordance with that decision. An affirmance will include a brief statement of the reason for the affirmance and will inform the appellant that the decision of the Panel represents the final decision of the Department and of the right to seek judicial review of the Panel's decision, when applicable.

(e) If the Panel's decision is that a record shall be amended in accordance with the appellant's request, the Chairman shall direct the office responsible for the record to amend the record, advise all previous recipients of the record of the amendment and its substance (if an accounting of previous disclosures has been made), and so advise the individual in writing.

(f) If the Panel's decision is that the amendment request is denied, in addition to the notification required by paragraph (d) of this section, the Chairman shall advise the appellant:

(1) Of the right to file a concise Statement of Disagreement stating the reasons for disagreement with the decision of the Department;

(2) Of the procedures for filing the Statement of Disagreement;

(3) That any Statement of Disagreement that is filed will be made available to anyone to whom the record is subsequently disclosed, together with, at the discretion of the Agency, a brief statement by the Agency summarizing its reasons for refusing to amend the record;

(4) That prior recipients of the disputed record will be provided a copy of any statement of disagreement, to the extent that an accounting of disclosures was maintained.

(g) If the appellant files a Statement of Disagreement under paragraph (f) of this section, the Agency will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently access the record. When the disputed record is

subsequently disclosed, the Agency will note the dispute and provide a copy of the Statement of Disagreement. The Agency may also include a brief summary of the reasons for not amending the record. Copies of the Agency's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by an individual under this part.

§ 212.24 Specific exemptions.

(a) Pursuant to 5 U.S.C. 552a(k), the Director or the Administrator may, where there is a compelling reason to do so, exempt a system of records, from any of the provisions of subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of the Act if a system of records is:

(1) Subject to the provisions of 5 U.S.C. 552(b)(1); (2) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Act: Provided, however, That if any individual is denied any right, privilege, or benefit to which he or she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(2) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(3) Required by statute to be maintained and used solely as statistical records;

(4) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(5) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(6) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

(b) Each notice of a system of records that is the subject of an exemption under 5 U.S.C. 552a(k) will include a statement that the system has been exempted, the reasons therefore, and a reference to the **Federal Register**, volume and page, where the exemption rule can be found.

(c) The systems of records to be exempted under section (k) of the Act, the provisions of the Act from which they are being exempted, and the justification for the exemptions, are set forth below:

(1) *Criminal Law Enforcement Records.* If the 5 U.S.C. 552a(j)(2) exemption claimed under paragraph (c) of 22 CFR 215.13 and on the notice of systems of records to be published in the **Federal Register** on this same date is held to be invalid, then this system is determined to be exempt, under 5 U.S.C. 552(a)(k)(1) and (2) of the Act, from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4); (G); (H); (I); and (f). The reasons for asserting the exemptions are to protect the materials required by executive order to be kept secret in the interest of the national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel.

(2) *Personnel Security and Suitability Investigatory Records.* This system is exempt under U.S.C. 552a(k)(1), (k)(2), and (k)(5) from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4); (G); (H); (I); and (f). These exemptions are claimed to protect the materials required by executive order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering those sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted.

(3) *Litigation Records.* This system is exempt under 5 U.S.C. 552(k)(1), (k)(2), and (k)(5) from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4) (G), (H), (I); and (f). These exemptions are claimed to protect the materials required by executive order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information.

(4) *Employee Equal Employment Opportunity Complaint Investigatory Records.* This system is exempt under 5 U.S.C. 552a(k)(1) and (k)(2) from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f). These exemptions are claimed to protect the materials required by executive order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources.

(5) The following systems of records are exempt under 5 U.S.C. 552a(k)(5) from the provision of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f):

(i) Employee Conduct and Discipline Records.

(ii) Employee Relations Records.

Note to paragraph (c)(5): This exemption is claimed for these systems of records to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of

the limitation on the extent to which this exemption may be asserted. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(6) *Partner Vetting System.* This system is exempt under 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5) from the provision of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f). These exemptions are claimed to protect the materials required by executive order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources, and to facilitate proper selection or continuance of the best applicants or persons for a given position or contract.

Dated: December 12, 2016.

Alecia Sillah,

Chief, Information and Records Division (acting), FOIA Public Liaison/Agency Records Officer, U.S. Agency for International Development.

[FR Doc. 2016–30413 Filed 12–21–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–1039]

Drawbridge Operation Regulation; Sloop Channel, Nassau, NY

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 Wantagh Parkway Bridge, mile 15.4 and the Meadowbrook State Parkway Bridge, mile 12.8, both across Sloop Channel, at Nassau, New York. This temporary deviation is necessary to facilitate public safety during a public event, the Jones Beach State Park U.S. Air Force Thunderbirds Air Show. This deviation allows the bridges to remain in the closed position during the public event.

DATES: This deviation is effective from 4 p.m. on May 27, 2017 to 7 p.m. on May 28, 2017.

ADDRESSES: The docket for this deviation, [USCG–2016–1039] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Ms. Judy K. Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4330, email *judy.k.leung-yee@uscg.mil.*

SUPPLEMENTARY INFORMATION: New York State Office of Parks, Recreation and Historic Preservation requested and the bridge owner for both bridges, the State of New York Department of Transportation, concurred with this temporary deviation from the normal operating schedule to facilitate public safety at the Jones Beach State Park U.S. Air Force Thunderbirds Air Show.

The Wantagh Parkway Bridge, mile 15.4, across Sloop Channel has a vertical clearance in the closed position of 16 feet at mean high water and 19.5 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.5.

The Meadowbrook State Parkway Bridge, mile 12.8, across Sloop Channel has a vertical clearance in the closed position of 22 feet at mean high water and 25 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.799(h).

Sloop Channel is transited by commercial fishing and recreational vessel traffic.

Under this temporary deviation, the Wantagh Parkway and the Meadowbrook State Parkway Bridges may remain in the closed position between 4 p.m. and 7 p.m. on May 27, 2017 and between 4 p.m. and 7 p.m. on May 28, 2017.

Vessels able to pass under the bridge in the closed position may do so at any time. The bridges will not be able to open for emergencies and there are no immediate alternate routes for vessels to pass.

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

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

Dated: December 19, 2016.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2016–30866 Filed 12–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–1063]

Drawbridge Operation Regulation; Reynolds Channel, Nassau County, NY

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 Long Beach Bridge, mile 4.7, across Reynolds Channel, at Nassau County, New York. This temporary deviation is necessary to temporarily increase staffing flexibility. This deviation allows the bridge to be opened with a four-hour advanced notice during the hours of 5 p.m. on December 23, 2016, to 7 a.m. on December 26, 2016 and from 5 p.m. on December 30, 2016, to 7 a.m. on January 2, 2017.

DATES: This deviation is effective from 5 p.m. on December 23, 2016 to 7 a.m. on January 2, 2017.

ADDRESSES: The docket for this deviation, [USCG–2016–1063] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Ms. Judy K. Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4330, email *judy.k.leung-yee@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Long Beach Bridge, mile 4.7, across Reynolds Channel has a vertical clearance in the closed position of 22 feet at mean high water and 24 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.799(g).

Reynolds Channel is transited by commercial and recreational traffic.

The bridge owner, Nassau County Department of Public Works, requested a temporary deviation from the normal operating schedule to increase staffing flexibility during this period. Historical

data shows the bridge has not received a request to open during these dates and times in the last three years.

Under this temporary deviation, the Long Beach Bridge shall open on signal from 5 p.m. on December 23, 2016, to 7 a.m. on December 26, 2016 and from 5 p.m. on December 30, 2016, to 7 a.m. on January 2, 2017, if at least four-hour advance notice is given by calling the number posted at the bridge.

Vessels able to pass under the bridge in the closed position may do so at anytime. The bridge will not be able to immediately open for emergencies and there are no alternate routes for vessels to pass.

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

This deviation from the operating regulations is authorized under 33 CFR 117.35. 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.

Dated: December 19, 2016.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2016–30864 Filed 12–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–1038]

Drawbridge Operation Regulation; Harlem River, New York, NY

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 125 Street (Triborough) Bridge across the Harlem River, mile 1.3, at New York, New York. This deviation is necessary to allow the bridge owner to facilitate rehabilitation of the mechanical and electrical components of the bridge. This deviation allows the bridge to remain in the closed position for the duration of the rehabilitation project.

DATES: This deviation is effective from January 17, 2017 through May 15, 2017.

ADDRESSES: The docket for this deviation, [USCG–2016–1038] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Joe M. Arca, Project Officer, First Coast Guard District, telephone (212) 514–4336, email *joe.m.arca@uscg.mil.*

SUPPLEMENTARY INFORMATION: The 125 Street (Triborough) Bridge, mile 1.3, across the Harlem River, has a vertical clearance in the closed position of 54 feet at mean high water and 59 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.789(b)(1).

The waterway is transited by commercial tugs, barges and recreational vessels. There have been no requests for bridge openings in the last two years.

The bridge owner, Triborough Bridge and Tunnel Authority (TBTA), requested a temporary deviation from the normal operating schedule to facilitate rehabilitation of the mechanical and electrical components of the bridge.

Under this temporary deviation, the 125 Street Bridge may remain in the closed position from January 17, 2017 through May 15, 2017.

Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will not be able to open for emergencies and there is an alternate route for vessels to pass.

The Coast Guard will inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operations can arrange their transits to minimize any impact caused by the temporary deviation. The Coast Guard notified known companies of the commercial vessels, NYPD, and FDNY in the area and they have no objections to 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: December 15, 2016.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2016–30858 Filed 12–21–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0322; FRL–9955–16–Region 9]

Approval and Limited Approval and Limited Disapproval of California State Implementation Plan Revisions; Butte County Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing action on three permitting rules submitted as a revision to the Butte County Air Quality Management District (BCAQMD) portion of the California State Implementation Plan (SIP). We are finalizing a limited approval and limited disapproval of one rule; we are finalizing approval of two permitting rules; and we are deleting ten rules from the SIP. These revisions concern the District's New Source Review (NSR) permitting program for new and modified sources of air pollution. This limited disapproval will trigger sanctions under CAA section 179 and 40 CFR 52.31 unless the EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of the final action.

DATES: This rule will be effective on January 23, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R09–OAR–2016–0322. 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.,* 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 through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Thien Khoi Nguyen, EPA Region IX, (415) 947–4120, *nguyen.thien@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to EPA.

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I. Proposed Action

On August 19, 2016 (81 FR 55402), the EPA proposed a limited approval and limited disapproval (LA/LD) or a full approval (as noted in the table) of the following rules that were submitted for incorporation into the Butte County portion of the California SIP.

TABLE 1—SUBMITTED NSR RULES

Rule No.	Rule title	Adopted	Submitted	Proposed action
400	Permit Requirements	04/24/14	11/06/14	Full Approval.
401	Permit Exemptions	04/24/14	11/06/14	Full Approval.
432	Federal New Source Review	04/24/14	11/06/14	LA/LD.

We proposed a full approval of Rules 400 and 401 as part of BCAQMD's general NSR permitting program because we determined that these rules meet the relevant CAA requirements. We proposed a limited approval of Rule 432 because we determined that the rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval of Rule 432 because we determined that the rule does not fully satisfy CAA section 189(e) requirements for regulation of $PM_{2.5}$ precursors. The rule does not specify ammonia as a $PM_{2.5}$ precursor and the demonstration provided by Butte County as part of its NSR program submittal is not adequate to allow the Administrator to determine whether potential new major sources and major modifications of ammonia emissions will or will not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area. We also proposed to remove ten existing rules from the SIP, as the submitted rules replaced the content of these pre-existing rules in the SIP.

The EPA also proposed to find that it is acceptable for BCAQMD to not incorporate the NSR Reform provisions of 40 CFR 51.165 into its NSR permit program because BCAQMD's permitting program will not be any less stringent than the federal permitting program. In addition, the EPA proposed to find that Rules 400, 401 and 432 meet the statutory requirements for SIP revisions as specified in sections 110(l) and 193 of the CAA.

II. EPA Action

No comments were submitted. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing approval of Rule 400 and Rule 401, and finalizing a limited approval and limited disapproval of Rule 432 into the BCAQMD portion of the California SIP. This action will incorporate the submitted rules into the SIP, including those provisions identified as deficient. The approval of Rule 432 is limited because the EPA is simultaneously finalizing a limited disapproval of Rule 432 under section 110(k)(3). This limited disapproval will trigger sanctions under CAA section 179 and 40 CFR 52.31 unless the EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of the final action.

Note that Rule 432 has been adopted by the BCAQMD, and the EPA's final limited disapproval will not prevent the local agency from enforcing it. The limited disapproval also will not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: *http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf.*

In addition, because we are finalizing our proposed action, we are removing existing Rules 4–4, 401, 402, 403, 405, 406, 407, 420, 421 and 424 from the Butte County portion of the California SIP.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the BCAQMD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and in hard copy at the U.S. Environmental Protection Agency, Region IX (Air–3), 75 Hawthorne Street, San Francisco, CA 94105–3901.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

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.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because 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, and 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 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA 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. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

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 February 21, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, New Source Review, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 31, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (b)(15), (c)(168)(i)(A)(*8*) and (*9*), (c)(222)(i)(E)(*2*), and (c)(457)(i)(C)(*2*), (*3*) and (*4*) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(b) * * *

(15) Butte County Air Quality Management District.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted with replacement paragraphs (c)(457)(i)(C)(*2*) and (*3*), respectively: Rule 405 ''Permit Conditions'' and Rule 04–04 ''Exemptions from Permit Requirements.''

(c) * * *

(168) * * *

(i) * * *

(A) * * *

(*8*) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(A)(*1*) of this section and now deleted with replacement in paragraph (c)(457)(i)(C)(*2*): Rule 401 ''General Requirements,'' Rule 402 ''Authority to Construct,'' Rule 406 ''Emission Calculations,'' Rule 407 ''Anniversary Date,'' Rule 420 ''Standards for Granting Applications,'' and Rule 421 ''Conditional Approval''.

(*9*) Previously approved on May 2, 2001 in paragraph (c)(168)(i)(A)(*4*) of this section and now deleted with replacement in paragraph (c)(457)(i)(C)(*2*): Rule 424 ''State Implementation Plan.''

* * * * *

(222) * * *

(i) * * *

(E) * * *

(*2*) Previously approved on May 2, 2001 in paragraph (c)(222)(i)(E)(*1*) of this section and now deleted with replacement in paragraph (c)(457)(i)(C)(*2*): Rule 403 ''Permit to Operate.''

* * * * *

(457) * * *

(i) * * *

(C) * * *

(*2*) Rule 400, ''Permit Requirements,'' amended on April 24, 2014.

(*3*) Rule 401, ''Permit Exemptions,'' amended on April 24, 2014.

(*4*) Rule 432, ''Federal New Source Review,'' amended on April 24, 2014.

* * * * *

[FR Doc. 2016–30644 Filed 12–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0421; FRL–9957–09–Region 4]

Air Plan Approval; Mississippi; Interstate Transport (Prongs 1 and 2) for the 2010 1-Hour NO_2 Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Mississippi State Implementation Plan (SIP), submitted by the Mississippi Department of Environmental Quality, on May 23, 2016, addressing the Clean Air Act (CAA or Act) interstate transport (prongs 1 and 2) infrastructure SIP requirements for the 2010 1-hour Nitrogen Dioxide (NO_2) National Ambient Air Quality Standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an ''infrastructure SIP.'' Specifically, EPA is approving Mississippi's May 23, 2016, SIP submission addressing prongs 1 and 2,

to ensure that air emissions in the State do not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour NO_2 NAAQS in any other state.

DATES: This rule is effective January 23, 2017.

ADDRESSES: EPA has established a docket for these actions under Docket Identification No EPA–R04–OAR–2016–0421. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be 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 of 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. Ms. Ward can be reached by telephone at (404) 562–9140 or via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) and from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

Through this action, EPA is approving Mississippi's May 23, 2016, SIP submission addressing prong 1 and prong 2 requirements for the 2010 1-hour NO_2 NAAQS. All other applicable infrastructure SIP requirements for Mississippi for the 2010 1-hour NO_2 NAAQS have been addressed in separate rulemakings. *See* 80 FR 14019 (March 18, 2015), 81 FR 32707 (May 24, 2016), and 81 FR 33139 (May 25, 2016).

In a notice of proposed rulemaking (NPRM) published on September 28, 2016 (81 FR 66591), EPA proposed to approve Mississippi's May 23, 2016, SIP revision addressing the interstate transport requirements for the 2010 NO_2 NAAQS. The NPRM provides additional detail regarding the rationale for EPA's actions, including further discussion of the requirements for prongs 1 and 2. Comments on the proposed rulemaking were due on or before October 28, 2016. EPA received no adverse comments on the proposed action.

II. Final Action

As described previously, EPA is approving approve Mississippi's May 23, 2016, SIP submission addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i) for the 2010 1-hour NO_2 NAAQS.

III. 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 rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they 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 these actions 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**. These actions are 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 these actions must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions 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. These actions 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.

Dated: December 6, 2016.

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 Z—Mississippi

■ 2. Section 52.1270(e) is amended by adding a new entry ''Good Neighbor Provisions (Section 110(a)(2)(D)(i)(I)) for the 2010 1-hour NO_2 NAAQS'' at the end of the table to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED MISSISSIPPI NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	*	*	*	*
Good Neighbor Provisions (Section 110(a)(2)(D)(i)(I) for the 2010 1-hour NO_2 NAAQS.	Mississippi	5/23/2016	12/22/16, [Insert **Federal Register** citation] .....

[FR Doc. 2016–30641 Filed 12–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0236; FRL–9954–47]

Bifenthrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of bifenthrin in or on avocado and pomegranate. This action is in response to EPA's granting of an emergency exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on avocado and pomegranate.

This regulation establishes a maximum permissible level for residues of bifenthrin in or on these commodities. The time-limited tolerances expire on December 31, 2019.

DATES: This regulation is effective December 22, 2016. Objections and requests for hearings must be received on or before February 21, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0236, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael L. Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0236 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 21, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0236, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with FFDCA sections 408(e) and 408(l)(6) of, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing time-limited tolerances for residues of bifenthrin, (2-methyl[1,1′-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane-carboxylate), in or on avocado at 0.50 parts per million (ppm) and pomegranate at 0.50 ppm. These time-limited tolerances expire on December 31, 2019.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of FFDCA section 408 and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, *i.e.,* without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Bifenthrin on Avocado and Pomegranate and FFDCA Tolerances

The California Department of Pesticide Regulations (CDPR) requested an emergency exemption for the use of bifenthrin on avocados to control the polyphagous shot hole borer (PSHB), *Euwallacea sp.* near *fornicatus.* PSHB is a non-native ambrosia beetle that is only known to exist in Israel and now California, where it is a pest for avocados and numerous ornamental species. According to CDPR, substantial economic damage is occurring and 50% of baseline net operating revenue has been documented due to the inadequate efficacy and short residual activity of registered alternatives.

CDPR also requested an emergency exemption for the use of bifenthrin on pomegranate to control leaffooted plant bug (LFPB), *Leptoglossus clypealis, L. occidentalis, and L. zonatus.* LFPBs are highly damaging pests for pomegranates. According to CDPR, substantial economic damage is occurring and 32% gross revenue loss is expected due to registered alternatives short residual activity and ineffective control of adult LFPB.

After having reviewed the submission, EPA determined that an emergency condition exists in California, and that the criteria for approval of an emergency exemption are met. EPA has authorized a specific exemption under FIFRA section 18 for the use of bifenthrin on avocado for control of polyphagous shot hole borer in California. Additionally, EPA has authorized crisis and specific exemptions under FIFRA section 18 for the use of bifenthrin on pomegranate to control leaffooted plant bug in California.

As part of its evaluation of the emergency exemption applications, EPA assessed the potential risks presented by residues of bifenthrin in or on avocados and pomegranates. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent, non-routine situation

and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in FFDCA section 408(l)(6). Although these time-limited tolerances expire on December 31, 2019, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on avocados and pomegranate after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether bifenthrin meets FIFRA's registration requirements for use on avocados and pomegranate or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of bifenthrin by a State for special local needs under FIFRA section 24(c), nor do these tolerances by themselves serve as the authority for persons in any State other than California to use this pesticide on the applicable crops under FIFRA section 18, absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for bifenthrin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of, and to make a determination on, aggregate exposures expected as a result of these emergency exemption requests and the time-limited tolerances for residues of bifenthrin on avocado at 0.50 ppm and pomegranate at 0.50 ppm. EPA's assessment of exposures and risks associated with establishing time-limited tolerances follows.

A. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for bifenthrin used for human risk assessment is discussed in Table 1 of the final rule published in the **Federal Register** of September 14, 2012, 77 FR 56782 (FRL–9361–6).

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to bifenthrin, EPA considered exposure under the time-limited tolerances established by this action as well as all existing bifenthrin tolerances in 40 CFR 180.442. EPA assessed dietary exposures from bifenthrin in food as follows:

i. *Acute exposure.* Acute effects were identified for bifenthrin. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA and the Dietary Exposure Evaluation Model-Food Consumption Intake Database (DEEM–FCID, version 3.16). As to residue levels in food, EPA developed anticipated residues (ARs) based on the latest USDA Pesticide Data Program (PDP) monitoring data 1998–2010, Food and Drug Administration (FDA) data, and field trial data (FTD) for bifenthrin. The assessment also made use of percent crop treated (PCT) data where available.

ii. *Chronic exposure.* EPA determined that there is no increase in hazard from repeat exposures to bifenthrin. Therefore, the acute dietary exposure assessment is protective for chronic dietary exposures because acute exposure levels are higher than chronic exposure levels. Accordingly, a dietary exposure assessment for the purpose of assessing chronic dietary risk was not conducted.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. Cancer risk is quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or nonlinear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit IV.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to bifenthrin. Cancer risk was assessed using the same exposure estimates as discussed in Unit IV.B.1.ii., *chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA

to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

Alfalfa, 1%; apple, 10%; almond, 25%; artichoke, 30%; beans, green, 50%; broccoli, 6%; cabbage, 30%; caneberries, 45%; canola/rapeseed, 3%; cantaloupe, 60%; carrots 10%; cauliflower, 10%; celery, 1%; corn, 5%; cotton, 10%; cucumbers, 15%; dry beans and peas, 1%; grape, table, 1%; grape, wine, 5%; honeydew, 75%; hazelnut (filberts), 5%; lettuce, 15%; onion, 1%; lima bean, 35%; nectarine, 3%; peanut, 5%; pea, green, 25%; peach, 7%; pear, 1%; pecan, 5%; pepper, 20%; pistachio, 40%; potato, 5%; pumpkin, 40%; sorghum, 1%; soybean, 5%; squash, 20%; strawberry, 55%; sweet corn, 50%; tomato, 20%; walnut, 25%; watermelon, 15%; wheat, spring, 1%; and wheat, winter, 1%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use and averaging across all observations. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency assumed 100% PCT for avocado and pomegranate uses.

The Agency believes that the three conditions discussed in Unit IV.B1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which bifenthrin may be applied in a particular area.

The previous dietary exposure assessment for use avocado relied on PCT estimates generated in 2011; however, recently updated bifenthrin PCT information (Screening Level Estimates of Agricultural Uses of Bifenthrin from 2005–2014; Updated Screening Level Usage Analysis (SLUA) report for Bifenthrin (03/24/2016)) have become available for consideration. When comparing the PCT estimates used previously with those that were updated in 2016, some individual PCT estimates increased, and some decreased. For most foods (*e.g.,* apples, green beans, grapes, peaches) which are typically risk drivers for the infants and children's populations who have highest estimated risks, the PCT data used in the previous assessment have not increased significantly or at all. Crops with significant increases (≤ 15% CT) are generally not those which are typically risk drivers (*e.g.,* artichokes, cabbage, canola). A significant children's food for which PCT increased significantly (25% to 50%CT) is green peas; however, since bifenthrin residues in peas are non-detectable in PDP monitoring data, a significant increase in estimated risks is not expected. Similarly, for other crops with smaller increases in PCT (almonds, sweet corn, peanuts, pecans, pistachios, and walnuts) detectable residues are not found; therefore, significant increases in dietary risk are not expected. While there are increases in PCT for some crops which are expected to lead to increased risk estimates (cucurbits, Cole crops, tomatoes, and some berries), the increased risk is expected to be small. Considering all of these factors, the updated PCT estimates are not expected to affect the results of the 2011 bifenthrin acute dietary risk assessment enough to warrant revising that assessment for this time limited tolerance decision. Even with the emergency use of bifenthrin on pomegranates, and the new PCT estimates, EPA remains confident that bifenthrin exposures are below the aPADs for all population subgroups.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for bifenthrin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of bifenthrin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST), Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of bifenthrin for acute exposures are estimated to be 0.0140 parts per billion (ppb) for surface water and 0.0030 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 0.0140 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and

flea and tick control on pets). Residential exposure is not anticipated from the use of bifenthrin on avocados and pomegranates because the emergency uses are restricted for use only by certified applicators and applicators under their direct supervision.

However, bifenthrin is currently registered for the following uses that could result in residential exposures: in indoor residential/household premises in the form of crack and crevice sprays, surface-directed application to indoor surfaces (bed bug treatment), as a paint additive, dust, automobiles/recreational vehicles and termite treatments. Outdoor residential uses of bifenthrin include broadcast and spot treatments including the following: Residential lawns and turf; golf course turf and outdoor premises (fencerows/hedgerows, paths/patios) by means of liquid spray and granular products; and ornamental (turf, shrubs, vines, trees, ground cover). EPA assessed residential exposure using the following assumptions: The Agency combines risk values resulting from separate routes of exposure when it is likely they can occur simultaneously based on the use pattern and the behavior associated with the exposed population, and if the hazard associated with the points of departure is similar across routes. A common toxicological endpoint, neurotoxicity, exists for dermal, incidental oral, and inhalation routes of exposure to bifenthrin. Therefore, these were combined for all residential exposure scenarios assessed. Of the proposed and established uses with potential residential handler and post-application exposure, the following high-end risk estimates were selected for use in the bifenthrin short-term aggregate assessment: Combined dermal and inhalation exposures to adults from the outdoor ornamental use and combined dermal and incidental oral exposures to children from contact with treated turf. Residential handler and post-application exposure scenarios are generally not combined. Although the potential exists for the same individual (*i.e.,* adult) to apply a pesticide around the home and be exposed by re-entering a treated area in the same day, this is an unlikely exposure scenario. Combining these exposure scenarios would also be inappropriate because of the conservative nature of each individual assessment.

EPA did not assess intermediate-term and chronic residential exposures because bifenthrin is acutely toxic and does not increase in potency with repeated dosing. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at: *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and'' other substances that have a common mechanism of toxicity.''

The Agency is required to consider the cumulative risks of chemicals sharing a common mechanism of toxicity. The Agency has determined that the pyrethroids and pyrethrins, including bifenthrin, share a common mechanism of toxicity. The members of this group share the ability to interact with voltage-gated sodium channels, ultimately leading to neurotoxicity. The cumulative risk assessment for the pyrethroids/pyrethrins was published on Nov. 9, 2011, and is available at *http://www.regulations.gov* in the public docket, EPA–HQ–OPP–2011–0746. Further information about the determination that pyrethroids and pyrethrins share a common mechanism of toxicity may be found in document ID: EPA–HQ–OPP–2008–0489–0006.

The Agency has conducted a quantitative analysis of the increased risk potential resulting from the section 18 use of bifenthrin on avocados and pomegranates; this analysis is summarized in the documents: ''Human Health Risk Assessment to Support Section 18 Specific Emergency Exemption Use on Avocado'' and ''Bifenthrin. Section 18 Request for Use on Pomegranate in California'' in docket ID number EPA–HQ–OPP–2016–0236. Since dietary exposures are a minor component of the overall pyrethroid cumulative risk, the uses on avocados and pomegranates will not contribute significantly or change the overall findings presented in the pyrethroid cumulative risk assessment. For information regarding EPA's efforts to evaluate the risk of exposure to pyrethroids, refer to *https://www.epa.gov/ingredients-used-pesticide-products/pyrethrins-and-pyrethroids#reg review.*

C. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The bifenthrin toxicity database includes developmental toxicity studies in rats and rabbits, a 2-generation reproduction study in rats, and a developmental neurotoxicity (DNT) study in rats. Bifenthrin is neither a developmental nor a reproductive toxicant. In the developmental toxicity studies in rat and rabbit, no developmental effects of biological significance were noted in either species in the presence of maternal toxicity. In a 2-generation reproduction study in the rat, tremors were noted only in females of both generations with one parental generation rat observed to have clonic convulsions. There are several *in vitro* and *in vivo* studies that indicate pharmacodynamic contributions to pyrethroid toxicity are not age-dependent. A study of the toxicity database for pyrethroid chemicals also noted no residual uncertainties regarding age-related sensitivities for the young, based on the absence of prenatal sensitivity observed in 76 guideline studies for 24 pyrethroids and the scientific literature. However, high-dose studies at Lethal Dose $(LD)_{50}$ doses noted that younger animals were more susceptible to the toxicity of pyrethroids. These age-related differences in toxicity are principally due to age-dependent pharmacokinetics; the activity of enzymes associated with the metabolism of pyrethroids increases with age. Nonetheless, the typical environmental exposures to pyrethroids are not expected to overwhelm the clearance capacity in juveniles. In support, at a dose of 4.0 mg/kg deltamethrin (near the Wolansky study LOAEL value of 3.0 mg/kg for deltamethrin), the change in the acoustic startle response was similar between adult and young rats.

3. *Conclusion.* The Agency is reducing the FQPA SF to 1X for adults, including women of child-bearing age, and children greater than 6 years of age, resulting in a total uncertainty factor of 100 (10x interspecies, 10x intraspecies, 1x FQPA). However, the Agency is retaining a 3X FQPA SF for children from birth to 6 years of age resulting in a total uncertainty factor of 300 (10x

interspecies, 10x intraspecies, 3x FQPA).

EPA has determined that reliable data show that the safety of infants and children less than or equal to 6 years old would be adequately protected if the FQPA SF were retained to 3X. That decision is based on the following findings:

i. The toxicity database for bifenthrin is complete.

ii. Like other pyrethroids, bifenthrin causes clinical signs of neurotoxicity from interaction with sodium channels. These effects are adequately assessed by the available guideline and non-guideline studies. Bifenthrin is a Type I pyrethroid, and neurotoxic effects characteristic of Type I pyrethroids were observed in adults in most of the bifenthrin toxicity database. Specifically, muscle tremors and decreased motor activity were observed in adults in guideline studies throughout the bifenthrin toxicology database, and hind-limb flexion was observed in adults the dermal study. For these reasons, the tremors seen in juveniles in the 2-generation reproduction study are not considered age-dependent effects.

iii. There is no evidence that bifenthrin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. This is consistent with the results of the guideline pre- and post-natal testing for other pyrethroid pesticides. There are, however, high dose LD_{50} studies (studies assessing what dose results in lethality to 50 percent of the tested population) in the scientific literature indicating that pyrethroids can result in increased quantitative sensitivity in the young. Examination of pharmacokinetic and pharmacodynamic data indicates that the sensitivity observed at high doses is related to pyrethroid age-dependent pharmacokinetics—the activity of enzymes associated with the metabolism of pyrethroids. Predictive pharmacokinetic models indicate that the differential adult-juvenile pharmacokinetics will result in otherwise equivalent administered doses for adults and juveniles producing a 3X greater dose at the target organ in juveniles compared to adults. No evidence of increased quantitative or qualitative susceptibility was seen in the pyrethroid scientific literature related to pharmacodynamics (the effect of pyrethroids at the target tissue) both with regard to inter-species differences between rats and humans and to differences between juveniles and adults. Specifically, there are *in vitro* pharmacodynamic data and *in vivo* data indicating similar responses between adult and juvenile rats at low doses and data indicating that the rat is a conservative model compared to the human based on species-specific pharmacodynamics of homologous sodium channel isoforms in rats and humans.

In light of the high dose literature studies showing juvenile sensitivity to pyrethroids and the absence of any additional data indicating a lack of elevated sensitivity to juveniles relative to adults, EPA is retaining a 3X additional safety factor as estimated by pharmacokinetic modeling. For several reasons, EPA concludes there are reliable data showing that a 3X factor is protective of the safety of infants and children. First, the high doses that produced juvenile sensitivity in the literature studies are well above normal dietary or residential exposure levels of pyrethroids to juveniles and these lower levels of exposure are not expected to overwhelm the ability metabolize pyrethroids as occurred with the high doses used in the literature studies. This is confirmed by the lack of a finding of increased sensitivity in pre- and post-natal guideline studies in any pyrethroid, including bifenthrin, despite the relatively high doses used in those studies. Second, the portions of both the inter- and intraspecies uncertainty factors that account for potential pharmacodynamic differences (generally considered to be approximately 3X for each factor) are likely to overstate the risk of inter- and intraspecies pharmacodynamic differences given the data showing similarities in pharmacodynamics between juveniles and adults and between humans and rats. Finally, as indicated, pharmacokinetic modeling only predicts a 3X difference between juveniles and adults.

iv. There are no residual uncertainties identified in the exposure databases with regard to dietary (food and drinking water), and residential exposures. Although the acute dietary exposure estimates are refined, the exposure estimates will not underestimate risk for the established and proposed uses of bifenthrin since the residue levels used are based on either monitoring data reflecting actual residues found in the food supply, or on high-end residues from field trials which reflect the use patterns which would result in highest residues in foods. Furthermore, processing factors used were either those measured in processing studies, or default high-end factors representing the maximum concentration of residue into a processed commodity. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to bifenthrin in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by bifenthrin.

D. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to bifenthrin will occupy 7% of the aPAD for the general U.S. population and 54% of the aPAD for infants <1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Based on the data summarized in Unit IV.B.ii., there is no increase in hazard with increasing dosing duration. Furthermore, chronic dietary exposures will be lower than acute exposures. Therefore, the acute aggregate assessment is protective of potential chronic aggregate exposures.

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

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 250 for adults and 340 for children 1 < 2 years old, the most highly exposed population. Because EPA's level of concern (LOC) for bifenthrin is a MOE of 100 or less for adults and 300

for children 1<2, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Because no intermediate-term adverse effect was identified, bifenthrin is not expected to pose an intermediate-term risk. An intermediate-term and/or chronic aggregate risk assessment was not conducted because bifenthrin is acutely toxic and there is no increase in hazard with increasing dosing duration. Furthermore, chronic dietary exposures will be lower than acute exposures. Therefore, the acute aggregate assessment is protective of potential chronic aggregate exposures.

5. *Aggregate cancer risk for U.S. population.* The acute aggregate assessment is protective of potential chronic aggregate exposures. For these same reasons, the acute aggregate assessment is also protective of potential cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to bifenthrin residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement methodology (gas chromatography/electron capture detection) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for bifenthrin in or on avocado and pomegranate.

VI. Conclusion

Therefore, time-limited tolerances are established for residues of bifenthrin, 2-methyl[1,1′-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane-carboxylate), in or on avocado at 0.50 ppm and pomegranate at 0.50 ppm. These tolerances expire on December 31, 2019.

VII. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA sections 408(e) and 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with FFDCA sections 408(e) and 408(l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 10, 2016.

Michael Goodis,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.442, revise paragraph (b) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances specified in the following table are established for

residues of the bifenthrin, (2-methyl[1,1′-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane-carboxylate) in or on the specified agricultural commodities, resulting from use of the pesticide pursuant to FIFRA section 18 emergency exemptions. The tolerances expire on the date specified in the table.

Commodity	Parts per million	Expiration date
Apple	0.5	12/31/2018
Avocado	0.50	12/31/2019
Nectarine	0.5	12/31/2018
Peach	0.5	12/31/2018
Pomegranate	0.50	12/31/2019

* * * * *

[FR Doc. 2016–29882 Filed 12–21–16; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 16–08]

RIN 3072–AC64

Rules of Practice and Procedure; Presentation of Evidence in Commission Proceedings

AGENCY: Federal Maritime Commission.

ACTION: Final rule

SUMMARY: The Federal Maritime Commission is reorganizing several subparts of its Rules of Practice and Procedure and revising its rules regarding presentation of evidence in Commission proceedings.

DATES: Effective January 27, 2016.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Assistant Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001. *Phone:* (202) 523–5725. *Email: secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: The Commission is updating or reorganizing several subparts of 46 CFR part 502, its Rules of Practice and Procedure, and substantively revising the subpart regarding how hearings are conducted to improve guidance concerning the presentation of evidence in Commission proceedings. Certain current rules are also removed to clarify current practice and eliminate duplication.

On May 3, 2016, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking public comment on the proposed amendments. 81 FR 26517. The Commission received one comment in response to the NPRM from the American Association of Port Authorities (AAPA) that addressed proposed § 502.204, revising and renumbering § 502.156. Current § 502.156 states ''[u]nless inconsistent with the requirements of the Administrative Procedure Act and these Rules, the Federal Rules of Evidence . . . will also be applicable.'' As explained in the NPRM, the proposed revision is intended to simplify the language in the rule by restating the liberal Administrative Procedure Act (APA) standard for admissibility and also to provide that the presiding officer may continue to look to the Federal Rules of Evidence (FRE) for guidance.

The Commission adopted the original language in § 502.156 in 1976, shortly after the FRE went into effect. 41 FR 20585, 20588 (May 19, 1976). In the 1975 notice proposing the language the Commission asserted that, as a general matter, the FRE did not appear to be inconsistent with the APA and that the FRE could be of great use to the Commission's administrative law judges (ALJs) in disposing of evidentiary issues that arise in Commission proceedings, so long as they were consistent with the requirements of the APA. 40 FR 43295, 43927 (Sep. 24, 1975). Since promulgation of the section, however, the Commission ''has recognized the liberal standards of admissibility of evidence in administrative proceedings and has repeatedly '. . . identified the need for considerable relaxation of the rules of evidence followed by the federal courts in proceedings before the Commission.' '' *EuroUSA Shipping, Inc., Tober Group, Inc.—Possible Violations,* 31 S.R.R. 540, 547 (FMC 2008) (hereinafter *Tober*) (quoting *Pacific Champion Express Co., Ltd.—Possible Violations,* 28 S.R.R. 1102, 1105–06 (ALJ 1999)). Given the divergence between the FRE and APA standards, the current section's attempt to apply both standards simultaneously creates a tension in the regulation and could be confusing to parties. Accordingly, the Commission is now explicitly providing that presiding officers may look to the FRE for guidance when determining the admissibility of evidence. The AAPA notes that current rule § 502.156, states that the FRE ''will be applicable'' to Commission proceedings ''unless inconsistent with'' the requirements of the APA whereas the proposed language provides that the presiding officer ''may look to the FRE for guidance.'' The AAPA inquires whether such a change is intended to loosen the admissibility standard in cases before the Commission, and if so, to what to degree. The new rule does not loosen the admissibility standards, but rather clarifies, based on Commission and judicial precedent, that the standard of admissibility is governed by the APA, not the FRE. While the presiding officer may consider the FRE for guidance, they are neither controlling nor binding. In response to the AAPA's expressed concern that the revised language suggests a change in the presiding officer's discretion, we clarify the final rule by replacing the language ''look to the FRE for guidance'' with the language ''consider the FRE for guidance'' as it better reflects the discretion of the presiding officer.

The Commission recently addressed the utility of applying the FRE in proceedings before it in *Tober.* Pointing to its own precedent, the Commission noted that it has long recognized the liberal standards of admissibility of evidence in administrative proceedings and the need for considerable relaxation of the rules of evidence followed by the federal courts in proceedings before the Commission. Applying those standards to the ALJ's exclusion of certain exhibits on the basis of the FRE, the Commission held that challenged exhibits were admissible under the APA standard and that ''to the extent that the Commission's rules and the APA diverge from the FRE, the FRE are not controlling and the Commission is not bound by their requirements.'' *Id.,* 549.

The AAPA also states that the proposed rule could impact motions for summary judgment. It noted that in federal court, a party opposing a motion on the grounds that there are material facts in genuine dispute must show that there is admissible evidence on its side of the asserted dispute. The AAPA appears to be concerned that a loosening of the standard may limit the utility of summary judgment motions. The Commission addressed the admissibility of evidence in the context of motions for summary judgment in *Tober.* Citing the Supreme Court's decision in *Celotex Corp.* v. *Catrett,* 477 U.S. 317, 324 (1986), the Commission stated: ''While the nonmoving party is to show facts that present a genuine issue worthy of trial, *the nonmoving party at the summary judgment stage is not required to produce evidence in a form that would be admissible at trial.*'' *Id.,* 31 S.R.R. at 549 (emphasis added). Thus, the Commission made clear that at the summary judgment stage, the nonmoving party only needs to show facts that present a genuine issue worthy of trial. *Id.* This standard is applied to ensure that doubts are resolved in favor of the nonmoving party. As the Commission noted, it has denied summary judgment even when the nonmovant has not submitted any

evidence, as well as when evidence has been deemed to be incomplete. *Id.,* 546. In short, there is no requirement in the federal courts or at the Commission that the party opposing a motion for summary judgment present evidence that would be admissible at trial or hearing. To the extent that the question of admissibility might arise at the summary judgment stage, the proposed rule does not change existing standards but simply continues application of the liberal standard mandated by the APA.

The AAPA also expresses concern that making reliance on the FRE discretionary may create discrepancies in the decisions of Presiding Officers, either because a Presiding Officer may choose to follow the FRE in one case but choose not to follow it in another, or because different Presiding Officers may apply different standards.

The revised rule does not create new or different standards. There is only one standard as provided in the APA, *i.e.,* ''all evidence which is relevant, material, reliable and probative, and not unduly repetitious or cumulative, shall be admissible.'' 46 CFR 502.156; 5 U.S.C. 556(d). The FRE will continue to be available to the presiding officer as a resource for guidance in determining admissibility of evidence under the APA standard. Any legal inconsistency in decisions on the admissibility of evidence will be subject to review by the Commission under the APA standard as in *Tober.*

Finally, the AAPA expressed concern that the Presiding Officer may perceive that the revised rule does not accord discretion to exclude evidence considered unreliable. Both the current and revised language are governed however by the same standard set forth in the APA.

The APA standard of admissibility has been the governing standard since this regulation was originally adopted in 1965. Since incorporation into the existing regulation in 1976, the FRE have always been subservient to the liberal APA standard. The revised language in the proposed rule adheres to this standard as required by the APA, while recognizing the usefulness of the FRE for guidance.

In 1986, the Administrative Conference of the United States (ACUS) published recommendations regarding the use of the FRE in administrative proceedings. ACUS compared three general categories of agency evidentiary rules. 1986 ACUS 6, 51 FR 25642. The category that is most analogous to current § 502.156 included ''rules that require presiding officers to apply the [FRE] 'so far as practicable.''' *Id.* ACUS identified four significant disadvantages with respect to this standard including:

> (1) Courts seem confused as to what it means or how to enforce it; (2) instructing presiding officers to exclude evidence based on the standard forces them to undertake a difficult and hazardous task; (3) excluding evidence on the basis that it is inadmissible in a jury trial is totally unnecessary to insure that agencies act only on the basis of reliable evidence; and (4) agencies, like other experts, should be permitted to rely on classes of evidence broader than those that can be considered by lay jurors.

Id. Accordingly, ACUS recommended that ''Congress should not require agencies to apply the [FRE], with or without the qualification 'so far as practicable,' to limit the discretion of presiding officers to admit evidence in formal adjudications.'' *Id.* ACUS also recognized, however, the disadvantages of relying on the APA standard alone, and the Commission has concluded that the FRE can be useful as a guide for litigants and presiding officers.

Reorganization of Part 502

Part 502 sets out the rules governing procedure in all types of Commission proceedings. However, after years of revisions, some users find the grouping and ordering of the subparts confusing. The Commission will reorder and rename certain subparts to better reflect the chronology of a typical adjudication, and to distinguish other types of proceedings, as enumerated in this table:

Current 46 CFR part 502	New 46 CFR part 502	Revisions
Subpart A, General Information		Redesignate § 502.141 as § 502.14.
Subpart E, Proceedings; Pleadings; Motions; Replies.	Subpart E, Private Complaints and Commission Investigations.	Separate subpart E in to subparts E and F, relocate and regroup rules within both subparts.
Subpart F, Settlement; Prehearing Procedure	Subpart F, Petitions, Exemptions and Orders to Show Cause.	Separate subpart E in to subparts E and F, relocate and regroup rules within both subparts.
Subpart J, Hearings; Presiding Officers; Evidence.	Subpart L, Presentation of Evidence	Revise several sections and relocate all (see Table below).
Subpart K, Shortened Procedure	Subpart K [Reserved]	Remove subpart K in its entirety.
Subpart L, Disclosures and Discovery	Subpart J, Disclosures and Discovery	Relocate and redesignate all rules to subpart J.
Subpart M, Briefs; Requests for Findings; Decisions; Exceptions.	Subpart M; Decisions, Appeals, Exceptions	Relocate § 502.153, remove § 502.222 and retitle.

Subpart A

In subpart A, several cross references are corrected and current § 502.141 which establishes that the Commission may hold hearings that are not part of an adjudicatory process, is moved to this subpart as general information and retitled.

Subpart D

Cross references are corrected in subpart D.

Subpart E

Subpart E, currently ''Proceedings, Pleading, Motions, Replies'' is renamed ''Private Complaints and Commission Investigations.'' Revised subpart E contains the procedures for institution of those proceedings, motions practice, opportunity for settlement, and other related rules. Section 502.61 which opens the subpart is revised by moving and amending a rule on notice of hearings from subpart J. Section 502.91 which deals with informal settlements is being moved to subpart E in order to clarify chronologically when informal settlement is most likely to occur. This change is not intended to limit the applicability of the section which would apply in any proceeding, including the proceedings described in subpart F.

Subpart F

Current subpart F addresses Settlement and Prehearing Procedure. Inasmuch as those subject areas are part of the process in adjudicatory proceedings, they are divided and moved into subpart E and a revised

subpart L governing presentation of evidence.

Subpart F is revised to apply to proceedings other than private complaints and Commission investigations, titled: ''Petitions, Exemptions, and Orders to Show Cause.'' These types of proceedings are generally distinct from complaint and investigation proceedings. With clear headings, the new rules are intended to be easier for the user to locate. Revised subpart F encompasses current §§ 502.73 through 502.77.

Subparts J, and L

The Commission is changing subpart J, ''Hearings; Presiding Officers; Evidence'', and subpart L, ''Disclosure and Discovery'' to more logically and chronologically group the processes conducted in a formal adjudication. Subpart L, Disclosure and Discovery is moved in its entirety to subpart J. Current subpart J, Hearings, is revised to encompass all rules governing the presentation of evidence and presented in revised subpart L titled ''Presentation of Evidence.'' The revisions to subpart J are discussed more extensively below.

Subpart K

The Commission is removing and reserving subpart K, ''Shortened Procedure.'' Shortened Procedure regulations provides that, if the respondent consents, after briefing by the parties, the record is closed and a decision may be issued without discovery or an oral hearing. The procedure has rarely been requested, although parts of the procedure have become standard practice (*e.g.,* not requiring an oral hearing). The procedure has not resulted in an ALJ decision in recent history, as the three proceedings utilizing shortened procedure since 1998 have resulted in settlement. The Commission has made several rule revisions in the past five years that have enhanced the efficiency of formal complaint proceedings including the requirement for initial disclosures in discovery, (current § 502.201), and the establishment of default rules in the absence of an answer, § 502.62(b)(6). Shortened procedure rules are not consistent with the requirement for initial disclosures, which help expedite all proceedings. If parties want to further limit discovery, that is possible without the provisions of subpart K. Moreover, the subparts S and T small claims proceedings may offer a solution to litigants seeking faster resolution of their disputes. The rules governing small claims proceedings are designed to make the litigation process faster and simpler for litigants seeking reparations of $50,000 or less.

Subpart M

The Commission revises subpart M to cover only matters that occur after conclusion of the parties' presentations in proceedings (*i.e.,* decisions, appeals and exceptions). The rules concerning briefs are moved into revised subpart L, ''Presentation of Evidence.'' However, rules governing briefs to accompany exceptions will remain in subpart M. Current § 502.153, Appeals from ruling of presiding officer other than orders of dismissal in whole or in part are moved into subpart M, as it concerns an appeal.

Subpart M current section	New section	Revisions
§ 502.221, Briefs; requests for findings	Subpart L, § 502.214, Briefs	Revised for clarity.
§ 502.222, Requests for enlargement of time for filing briefs.	Subpart L, § 502.215	Revised for clarity.
§§ 502.223 through 502.229	Text unchanged.	
§ 502.230, Reopening by presiding officer or Commission.	§ 502.230, Reopening by Commission	Rule concerning supplementing evidence prior to an initial decision will be moved to § 502.216, Supplementing the record.

Subpart J, Hearings—Presentation of Evidence

Currently subpart J, Hearings, presents the Commission's rules on hearings and presentation of evidence. These rules governing presentation of evidence are revised and presented in revised subpart L. The revisions are intended to reflect the procedures currently used by the Commission, to utilize current language and standards set by the Federal Rules of Civil Procedure where appropriate, and to clarify and simplify rules where possible. Several rules currently in the subpart will be removed in their entirety to eliminate duplication and reflect current practice. The revisions to subpart J are enumerated in the table below:

Subpart J current section	New Subpart L	Revisions
§ 502.141, Hearings not required by statute	Move to subpart A	Does not pertain to adjudicatory hearings.
§ 502.142, Hearings required by statute	§ 502.201, Applicability and Scope	Revised to define ''hearing''.
§ 502.143, Notice of nature of hearing, jurisdiction and issues.	Moved to § 502.61(c), Proceedings	
§ 502.144, Notice of time and place of hearing; postponement of hearing.	§ 502.211	Regroup with other rules pertaining only to oral hearings.
§§ 502.145 through 502.149 [Reserved].		
§ 502.150, Further evidence required by presiding officer during hearing.	Remove	Within presiding officer's authority to regulate a hearing in § 502.25(b)(3).
§ 502.151, Exceptions to rulings of presiding officer unnecessary.	§ 502.212	Regroup with other rules pertaining only to oral hearings.
§ 502.152, Offer of Proof	§ 502.204(b)	Moved because related to admissibility.
§ 502.153, Appeal from ruling of presiding officer other than orders of dismissal in whole or in part.	Subpart M, § 502.221	Revised and moved to subpart M as it concerns an appeal.
§ 502.154, Rights of parties as to presentation of evidence.	§ 502.202	Revised to mirror APA.
§ 502.155, Burden of proof	§ 502.203	Revised for clarity.
§ 502.156, Evidence admissible	§ 502.204	Revised to clarity.

Subpart J current section	New Subpart L	Revisions
§ 502.157, Written evidence	Removed	Within presiding officer's authority to regulate a hearing in § 502.25(b)(3).
§ 502.158, Documents containing matter not material.	Removed	Within presiding officer's authority to regulate a hearing in § 502.25(b)(3).
§ 502.159 [Reserved].		
§ 502.160, Records in other proceedings	§ 502.205.	
§ 502.161, Commission's files	§ 502.206, Incorporation by reference	Revised for clarity.
§ 502.162, Stipulations	§ 502.207	Revised for clarity.
§ 502.163, Receipt of documents after hearing	Removed	Covered by § 502.216, Supplementing the record.
§ 502.164, Oral argument at hearing	Removed	Within presiding officer's authority to regulate a hearing in § 502.25(b)(3).
§ 502.165, Official Transcript	§ 502.213	Revised and modernized.
§ 502.166, Correction of transcript	§ 502.213.	
§ 502.167, Objection to public disclosure of information.	§ 502.208	Revised to cross reference § 502.5.
§ 502.168, Copies of data or evidence	Removed	Covered by § 502.212.
§ 502.169, Record of decision	§ 502.217	Revised for clarity.

Following is a more detailed description of each new rule that will appear in revised subpart L.

§ 502.201, Applicability and Scope

§ 502.201 is derived and moved from current § 502.142 and sets out the proceedings for which the rules in the subpart will apply. The term hearing is defined as ''a formal adjudicatory proceeding in which evidence is presented orally, or through written statement, or by combination thereof'' to reflect the broader and more inclusive meaning of the term in current administrative practice.

§ 502.202, Right of Parties To Present Evidence

§ 502.202 is derived and moved from current § 502.154 but is revised to reflect that the presiding officer may limit introduction of evidence if it is ''irrelevant, immaterial, or unduly repetitious'' mirroring the Administrative Procedure Act.

§ 502.203, Burden of Proof

§ 502.203 is derived and moved from current § 502.155 and clarifies the language to include reference to motions for ease of understanding the burden of proof.

§ 502.204, Evidence Admissible

Discussion of § 502.204(a) is above in discussion of the AAPA comment. Also, the text of current § 502.152 has been modernized to clarify the procedures governing when and how to make an offer of proof. The rule is moved into revised § 502.204 as paragraph (b) as a logical part of the rule governing admissibility of evidence. The final rule revises slightly the proposed rule for clarity.

§§ 502.205 and 502.206, Documents Incorporated Into the Record by Reference

Revising current § 502.160 (revised § 502.205) allows documents in another Commission proceeding to be incorporated into the record by reference. The final rule revises slightly the proposed rule for clarity. § 502.206 allows material in any document on file with the Commission that is also available to the public to be incorporated into the record by reference.

§ 502.207, Stipulations

Current § 502.162 allows for stipulation. The rule is moved to § 502.207 and revises the language for clarity.

§ 502.208, Objection to Public Disclosure of Information

§ 502.208 revises current § 502.167, Objection to public disclosure of information. The change adds a cross reference to § 502.5 where the Commission recently spelled out its requirements for submission of confidential material in a final rule. 80 FR 14318 (Mar. 19, 2015.)

§§ 502.209 and 502.210, Prehearing Conference and Statements

Current §§ 502.94 and 502.95 are moved from subpart E as they pertain to hearings. The language is clarified to reflect current practice of filing a motion instead of a petition in Rule 502.209. The procedure and timeline for filing a prehearing statement are provided in 502.210.

§§ 502.211 Through 502.213, Oral Hearings

§§ 502.211 through 502.213 deal with oral hearings and consist of the provisions found in current §§ 502.144, 502.151, and 502.165. Current § 502.165, Official transcript, requires revision as it currently contains a description of section 11 of the Federal Advisory Committee Act (FACA) and the Office of Management and Budget's (OMB) interpretation of that section, which are the basis for the Commission's regulations with respect to obtaining copies of transcripts. In order to simplify these provisions, the Commission includes in the new § 502.213 only the relevant requirements and deletes the aforementioned references to FACA and OMB's interpretation.

§§ 502.214 and 502.215, Briefs

Sections 502.221 and 502.222 concerning briefs are included in this subpart and renumbered as §§ 502.214 and 502.215. The last sentence of § 502.221(a), which requires that the period of time for filing briefs will be the same for both parties, is removed as setting time is within the powers of the presiding officer as established in recently revised § 502.25. Section 502.221(c) is deleted as it is not current practice for the Presiding Officer to ''require the Bureau of Enforcement to file a request for findings of fact and conclusions within a reasonable time prior to the filing of briefs.'' Generally, the Commission's Bureau of Enforcement (BOE) files the first brief unless concurrent briefs are appropriate for the particular case; this is more appropriate to address in the scheduling order issued in each particular proceeding.

§ 502.216, Supplementing the Record

Current § 502.230(a), Motion to Reopen, is renumbered, renamed and revised to provide instructions concerning submission of evidence after final presentations in a proceeding and

prior to issuance of an initial decision. The language of the rule and the heading ''Supplementing the record'' is more descriptive of the current practice before the Commission's Administrative Law Judges but does not substantively revise the process or rights of a party to a proceeding.

§ 502.217, Record of Decision

Current § 502.169 is moved to subpart L and the reference to ''filing and motions'' replaces ''paper and requests.''

The Commission has found that several regulations reference these rules, and that these references may now be inaccurate due to shifts in numbering. The Commission plans to correct these references in the near future through technical corrections, which will be published in the **Federal Register**.

Rulemaking Analyses and Notices

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities. 5 U.S.C. 604. An agency is not required to publish a FRFA, however, for the following types of rules, which are excluded from the APA's notice-and-comment requirement: interpretative rules; general statements of policy; rules of agency organization, procedure, or practice; and rules for which the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to public interest. See 5 U.S.C. 553(b).

Although the Commission elected to seek public comment on its proposed regulatory amendments to part 502, these amendments concern the Commission's practice and procedures. Therefore, the APA does not require publication of a notice of proposed rulemaking in this instance, and the Commission is not required to prepare a FRFA.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This final rule does not contain any collections of information, as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects in 46 CFR Part 502

Administrative practice and procedure, Archives and records, Business and industry, Classified information, Confidential business information, Consumer protection, Freedom of information, Government in the Sunshine Act, Government publications, Health records, Information, Newspapers and magazines, Paperwork requirements, Printing, publications, Privacy, Public meetings, Record retention, Records, Reporting and recordkeeping requirements, Trade names, Trade practices.

For the reasons stated in the preamble, the Federal Maritime Commission amends 46 CFR part 502 as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596, 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41309, 44101–44106; E.O. 11222 of May 8, 1965.

§ 502.5 [Amended]

■ 2. Amend § 502.5:

■ a. In the introductory text, by removing the phrase ''502.167, 502.201(j)(1)(vii)'' and adding in its place the phrase ''502.141(j)(1)(vii), 502.208'', and by removing the reference ''§ 502.201(j)'' and adding in its place the reference ''§ 502.141(j)''; and

■ b. In paragraph (b) by removing the reference ''§ 502.201(j)(1)(vii)'' and adding in its place the reference ''§ 502.141(j)(1)(vii)''.

§ 502.6 [Amended]

■ 3. Amend § 502.6(c) by removing the phrase ''§ 502.203 or § 502.204'' and adding in its place the phrase ''§ 502.143 or § 502.144''.

§ 501.10 [Amended]

■ 4. Amend § 502.10 by removing the reference ''502.153'' and adding in its place the reference ''502.221''.

Subpart D—Rulemaking

§ 502.52 [Amended]

■ 5. Amend § 502.52 by removing the citation ''§ 502.143'' and adding in its place the citation ''§ 502.61(c)''.

§ 502.53 [Amended]

■ 6. Amend § 502.53(a) by removing the reference ''subpart J'' and adding in its place the reference ''subpart L''.

Subpart E—Private Complaints and Commission Investigations

■ 7. Revise the subpart E heading to read as set forth above.

■ 8. Amend § 502.61 by removing the words ''under normal or shortened procedures (subpart K)'' and the last sentence from paragraph (a); redesignating paragraph (b) as paragraph (d) and adding a new paragraph (b) and paragraph (c) to read as follows:

§ 502.61 Proceedings

* * * * *

(b) The Commission may commence a proceeding for a rulemaking, for an adjudication (including Commission enforcement action under § 502.63), or a non-adjudicatory investigation upon petition or on its own initiative by issuing an appropriate order.

(c) Persons entitled to notice of hearings, except those notified by complaint service under § 502.113, will be duly and timely informed of the nature of the proceeding, the legal authority and jurisdiction under which the proceeding is conducted, and the terms, substance, and issues involved, or the matters of fact and law asserted, as the case may be. Such notice will be published in the **Federal Register** unless all persons subject thereto are named and either are served or otherwise have notice thereof in accordance with law.

* * * * *

§ 502.69 [Amended]

■ 9. Amend § 502.69(f) by removing ''shortened procedure (subpart K of this part)'' and removing the citation ''§ 502.221'' and adding in its place the citation ''§ 502.214''.

Subpart F—Petitions, Exemptions, and Orders to Show Cause

■ 10. Revise the subpart F heading to read as set forth above.

§§ 502.91 through 502.95 [Removed]

■ 11. Remove §§ 502.91 through 502.95.

§§ 502.73 through 502.77 [Redesignated as §§ 502.91 through 502.95 and Transferred to Subpart F]

■ 12. Redesignate §§ 502.73 through 502.77 as §§ 502.91 through 502.95, respectively, and transfer them to subpart F.

§§ 502.78 and 502.79 [Redesignated as §§ 502.73 and 502.74]

■ 13. Redesignate §§ 502.78 and 502.79 as §§ 502.73 and 502.74, respectively, in subpart E.

■ 14. Add a new § 502.75 to subpart E to read as follows:

§ 502.75 Opportunity for informal settlement.

(a) Parties are encouraged to make use of all the procedures of this part that are designed to simplify or avoid formal litigation, and to assist the parties in reaching settlements whenever it appears that a particular procedure would be helpful.

(b) Where time, the nature of the proceeding, and the public interest permit, all interested parties will have the opportunity for the submission and consideration of facts, argument, offers of settlement, or proposal of adjustment, without prejudice to the rights of the parties.

(c) No settlement offer, or proposal will be admissible in evidence over the objection of any party in any hearing on the matter.

(d) As soon as practicable after the commencement of any proceeding, the presiding officer will direct the parties or their representatives to consider the use of alternative dispute resolution, including but not limited to mediation, and may direct the parties or their representatives to consult with the Federal Maritime Commission Alternative Dispute Resolution Specialist about the feasibility of alternative dispute resolution.

(e) Any party may request that a mediator or other neutral be appointed to assist the parties in reaching a settlement. If such a request or suggestion is made and is not opposed, the presiding officer will appoint a mediator or other neutral who is acceptable to all parties, coordinating with the Federal Maritime Commission Alternative Dispute Resolution Specialist. The mediator or other neutral will convene and conduct one or more mediation or other sessions with the parties and will inform the presiding officer, within the time prescribed by the presiding officer, whether the dispute resolution proceeding resulted in a resolution or not, and may make recommendations as to future proceedings. If settlement is reached, it will be submitted to the presiding officer who will issue an appropriate decision or ruling. All such dispute resolution proceedings are subject to the provisions of subpart U of this part.

(f) Any party may request that a settlement judge be appointed to assist the parties in reaching a settlement. If such a request or suggestion is made and is not opposed, the presiding officer will advise the Chief Administrative Law Judge who may appoint a settlement judge who is acceptable to all parties. The settlement judge will convene and preside over conferences and settlement negotiations and will report to the presiding officer within the time prescribed by the Chief Administrative Law Judge, on the results of settlement discussions with appropriate recommendations as to future proceedings. If settlement is reached, it must be submitted to the presiding officer who will issue an appropriate decision or ruling. [Rule 75.]

■ 15. Revise the newly redesignated § 502.91 to read as follows:

§ 502.91 Order to show cause.

The Commission may institute a proceeding by order to show cause. The order will be served upon all persons named therein, will include the information specified in § 502.221, will require the person named therein to answer, and may require such person to appear at a specified time and place and present evidence upon the matters specified. [Rule 91.]

Exhibit No. 1 to Subpart F of Part 502 [Removed]

■ 16. Remove reserved Exhibit No. 1 to Subpart F of Part 502.

Subpart H—Service of Documents

§ 502.114 [Amended]

■ 17. Amend § 502.114(a) by removing the citation ''§ 502.145'' and adding in its place the citation ''§ 502.131''.

§ 502.118 [Removed]

■ 18. Remove § 502.118.

Subpart I—Subpoenas

§ 502.132 [Amended]

■ 19. Amend § 502.132(c) by removing the citation ''§ 502.203'' and adding in its place the citation ''§ 502.143''.

§ 502.136 [Amended]

■ 20. Amend § 502.136 by removing the citation ''§ 502.210(b)'' and adding in its place the citation ''§ 502.150(b)''.

Subpart J—Disclosures and Discovery

■ 21. Revise the subpart J heading to read as set forth above.

■ 22. Redesignate § 502.141 as § 502.14, transfer it to subpart A, and revise the section heading to read as follows:

§ 502.14 Public hearings.

* * * * *

§§ 502.142 through 502.150 [Removed]

■ 23. Remove §§ 502.142 through 502.150.

§§ 502.201 through 502.210 [Redesignated as §§ 502.141 through 502.150 and Transferred to Subpart J]

■ 24. Redesignate §§ 502.201 through 502.210 as §§ 502.141 through 502.150, respectively, and transfer them to subpart J.

§ 502.143 [Amended]

■ 25. Amend newly redesignated § 502.143:

■ a. In paragraph (a)(1) by removing the citation ''§ 502.03(a)(2)'' and adding in its place the citation ''§ 502.143(a)(2)'';

■ b. In paragraph (a)(2)(i) by removing the citation ''§ 502.204'' and adding in its place the citation ''§ 502.144'';

■ c. In paragraph (b)(2) by removing the citation ''§ 502.206'' and adding in its place the citation ''§ 502.146'';

■ d. In paragraph (b)(5)(i) by removing the citation ''§ 502.202'' and adding in its place the citation''§ 502.142'';

■ e. In paragraph (b)(5)(ii) by removing the citation ''§ 502.203(b)(5)(i)(A)'' and adding in its place the citation ''§ 502.143(b)(5)(i)(A)'';

■ f. In paragraph (c)(1) by removing the citation ''§ 502.154'' and adding in its place the citation ''§ 502.202'' and by removing the citation ''§ 502.203(b)(3)'' and adding in its place the citation ''§ 502.143(b)(3)'';

■ g. In paragraph (c)(2) by removing the citation ''§ 502.203(d)(2)'' and adding in its place the citation ''§ 502.143(d)(2)'';

■ h. In paragraph (d)(1) by removing the citation ''§ 502.201(e)(2)'' and adding in its place the citation ''§ 502.141(e)'';

■ i. In paragraph (d)(2)(ii) by removing the citation ''§ 502.201(j)'' and adding in its place the citation ''§ 502.141(j)''; and

■ j. In paragraph (e)(2) by removing the citation ''§ 502.203(f)(1)'' and adding in its place the citation ''§ 502.143(f)(1)''.

§ 502.144 [Amended]

■ 26. Amend newly redesignated § 502.144:
■ a. In paragraph (a)(2)(i) by removing the citation''§ 502.203'' and adding in its place the citation ''§ 502.143'';
■ b. In paragraph (1)(4) by removing the citation ''§ 502.203(b)(6)'' and adding in its place the citation ''§ 502.143(b)(6)''.

§ 502.145 [Amended]

■ 27. Amend newly redesignated § 502.145:
■ a. In paragraph (a)(1) by removing the citation ''§ 502.201(e)(2)'' and adding in its place the citation ''§ 502.141(e)(2)'';
■ b. In paragraph (a)(2) by removing the citation ''§ 502.201(e) and (f)'' and adding in its place the citation ''§ 502.141(e) and (f)'' ; and
■ c. In paragraph (b)(2) by removing the citation ''§ 502.201(l)'' and adding in its place the citation ''§ 502.141(l)''.

§ 502.146 [Amended]

■ 28. Amend newly redesignated § 502.146:
■ a. In paragraph (a) by removing the citation ''§ 502.201(e) and (f)'' and adding in its place the citation ''§ 502.141(e) and (f)''; and
■ b. In paragraph (b)(2) by removing the citation ''§ 502.201(l)'' and adding in its place the citation ''§ 502.141(l)''.

§ 502.147 [Amended]

■ 29. Amend newly redesignated § 502.147(a)(3) by removing the citation ''§ 502.201(l)'' and adding in its place the citation ''§ 502.141(l)''.

§ 502.148 [Amended]

■ 30. Amend newly redesignated § 502.148(a) by removing the citation ''§§ 502.202 through 502.207'' and adding in its place the citation ''§§ 502.142 through 502.147''.

§ 502.149 [Amended]

■ 31. Amend newly redesignated § 502.149:
■ a. In paragraph (a)(1)(iii) by removing the citation ''§ 502.209(a)(2) through (7)'' and adding in its place the citation''§ 502.149(a)(2) through (7)'';
■ b. In paragraph (a)(2) by removing the citation ''§ 502.156 of subpart J'' and adding in its place the citation ''§ 502.204 of subpart L'';
■ c. In paragraph (a)(3) by removing the phrase ''§ 502.203(b)(6) or § 502.204(a)(4)'' and adding in its place the phrase ''§ 502.143(b)(6) or § 502.144(a)(4);
■ d. In paragraph (a)(7) by removing the citation ''§ 502.156 of subpart J'' and adding in its place the citation ''§ 502.204 of subpart L'';
■ e. In paragraph (b) by removing the phrase ''§ 502.202(b) and § 502.209(d)(3)'' and adding in its place the phrase ''§ 502.142(b) and § 502.149(d)(3)''; and
■ f. In paragraph (d)(3)(iii) by removing the citation ''§ 502.204'' and adding in its place the citation ''§ 502.144''.

§ 502.150 [Amended]

■ 32. Amend newly redesignated § 502.150(a)(1) by removing the citation ''§ 502.201'' and adding in its place the citation ''§ 502.141'' and by removing the citation ''§ 502.206'' and adding in its place the citation ''§ 502.146''.

§§ 502.151 through 502.169 [Removed and reserved]

■ 33. Remove and reserve §§ 502.151 through 502.169.

Subpart K [Removed and Reserved]

■ 34. Remove and reserve subpart K, consisting of §§ 502.181 through 502.187.

■ 35. Revise subpart L to read as follows:

Subpart L—Presentation of Evidence

Sec.
502.201 Applicability and scope.
502.202 Right of parties to present evidence.
502.203 Burden of proof.
502.204 Evidence admissible.
502.205 Records in other proceedings.
502.206 Documents incorporated into the record by reference.
502.207 Stipulations.
502.208 Objection to public disclosure of information.
502.209 Prehearing conference.
502.210 Prehearing statements.
502.211 Notice of time and place of oral hearing; postponement of hearing.
502.212 Exceptions to rulings of presiding officer unnecessary.
502.213 Official transcript.
502.214 Briefs; requests for findings.
502.215 Requests for enlargement of time for filing briefs.
502.216 Supplementing the record.
502.217 Record of decision.

§ 502.201 Applicability and scope.

(a) The rules in this subpart apply to adjudicatory proceedings conducted under the statutes administered by the Commission involving matters which require determination after notice and opportunity for hearing. Adjudicatory proceedings are formal proceedings commenced upon the filing of a sworn complaint or by Order of the Commission. Such proceedings will be conducted pursuant to the Administrative Procedure Act, 5 U.S.C. 551–559, and the rules in this subpart.

(b) The term hearing means a formal adjudicatory proceeding in which evidence is presented orally, or through written statements, or by combination thereof. The term oral hearing means a hearing at which evidence is presented through oral testimony of a witness. [Rule 201].

§ 502.202 Right of parties to present evidence.

Every party has the right to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The presiding officer, however, has the right and duty to limit the introduction of evidence and the examination and cross-examination of witnesses when, in his or her judgment, such evidence or examination is irrelevant, immaterial, or unduly repetitious. [Rule 202.]

§ 502.203 Burden of proof.

In all cases governed by the requirements of the Administrative Procedure Act, 5 U.S.C. 556(d), the burden of proof is on the proponent of the motion or the order. [Rule 203.]

§ 502.204 Evidence admissible.

(a) In any proceeding under the rules in this part and in accordance with the Administrative Procedure Act, all evidence which is relevant, material, reliable and probative, and not unduly repetitious or cumulative, will be admissible. All other evidence will be excluded. The presiding officer may consider the Federal Rules of Evidence for guidance.

(b) A party who objects to a ruling of the presiding officer rejecting or excluding proffered evidence may make an offer of proof. If the ruling excludes proffered oral testimony, an offer of proof may consist of a statement by counsel of the substance of the evidence that would be adduced, or in the discretion of the presiding officer, testimony of the witness. If the ruling excludes documents offered as evidence or reference to documents or records, the documents or records shall be marked for identification and will constitute the offer of proof. [Rule 204.]

§ 502.205 Records in other proceedings.

Portions of the record of other proceedings may be received in evidence. A true copy of the records sought to be admitted must be presented in the form of an exhibit unless the presiding officer accepts the parties' stipulation that such records may be incorporated by reference. [Rule 205.]

§ 502.206 Documents incorporated into the record by reference.

Any matter contained in a document on file with the Commission that is available to the public may be received in evidence through incorporation by reference without producing such document, provided that the matter so offered is specified in such manner as to be clearly identified, with sufficient particularity, and readily located electronically. [Rule 206.]

§ 502.207 Stipulations.

The parties may, and are encouraged to, stipulate any facts involved in the proceeding and include them in the record with the consent of the presiding officer. A stipulation may be admitted even if all parties do not agree, provided that any party who does not agree to the stipulation has the right to cross-examine and offer rebuttal evidence. [Rule 207.]

§ 502.208 Objection to public disclosure of information.

(a) If any party wishes to present confidential information or upon objection to public disclosure of any information sought to be elicited, the requirements and procedures in § 502.5 will apply.

(b) In an oral hearing, the presiding officer may in his or her discretion order that a witness will disclose such information only in the presence of the parties and those designated and authorized by the presiding officer. Any transcript of such testimony will be held confidential to the extent the presiding officer determines. Copies of transcripts will be served only to authorized parties or their representatives or other parties as the presiding officer may designate.

(c) Any information given pursuant to this section may be used by the presiding officer or the Commission if deemed necessary to a correct decision in the proceeding. [Rule 208.]

§ 502.209 Prehearing conference.

(a)(1) Prior to any hearing, the Commission or presiding officer may direct all interested parties, by written notice, to attend one or more prehearing conferences for the purpose of considering any settlement under § 502.91, formulating the issues in the proceeding, and determining other matters to aid in its disposition. In addition to any offers of settlement or proposals of adjustment, the following may be considered:

(i) Simplification of the issues;

(ii) The necessity or desirability of amendments to the pleadings;

(iii) The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;

(iv) Limitation of the number of witnesses;

(v) The procedure to be used at the hearing;

(vi) The distribution to the parties prior to the hearing of written testimony and exhibits;

(vii) Consolidation of the examination of witnesses by counsel;

(viii) Such other matters as may aid in the disposition of the proceeding.

(2) Prior to the hearing, the presiding officer may require exchange of exhibits and any other material that may expedite the hearing. The presiding officer will assume the responsibility of accomplishing the purposes of the notice of prehearing conference so far as this may be possible without prejudice to the rights of any party.

(3) The presiding officer will rule upon all matters presented for decision, orally upon the record when feasible, or by subsequent ruling in writing. If a party determines that a ruling made orally does not cover fully the issue presented, or is unclear, such party may file a motion requesting a further ruling within ten (10) days after receipt of the transcript.

(b) In any proceeding under the rules in this part, the presiding officer hold an informal conference prior to the taking of testimony, or may recess the hearing for such a conference, with a view to carrying out the purposes of this section.

(c) At any prehearing conference, consideration may be given to whether the use of alternative dispute resolution would be appropriate or useful for the disposition of the proceeding whether or not there has been previous consideration of such use. [Rule 209.]

§ 502.210 Prehearing statements.

(a) Unless a waiver is granted by the presiding officer, it is the duty of all parties to a proceeding to prepare a statement or statements at a time and in the manner to be established by the presiding officer provided that there has been reasonable opportunity for discovery. To the extent possible, joint statements should be prepared.

(b) The prehearing statement must state the name of the party or parties on whose behalf it is presented and briefly set forth the following matters, unless otherwise ordered by the presiding officer:

(1) Issues involved in the proceeding.

(2) Facts stipulated pursuant to the procedures together with a statement that the party or parties have communicated or conferred in a good faith effort to reach stipulation to the fullest extent possible.

(3) Facts in dispute.

(4) Witnesses and exhibits by which disputed facts will be litigated.

(5) A brief statement of applicable law.

(6) The conclusion to be drawn.

(7) Suggested time and location of hearing and estimated time required for presentation of the party's or parties' case.

(8) Any appropriate comments, suggestions, or information which might assist the parties in preparing for the hearing or otherwise aid in the disposition of the proceeding.

(c) The presiding officer may, for good cause shown, permit a party to introduce facts or argue points of law outside the scope of the facts and law outlined in the prehearing statement. Failure to file a prehearing statement, unless waiver has been granted by the presiding officer, may result in dismissal of a party from the proceeding, dismissal of a complaint, judgment against respondents, or imposition of such other sanctions as may be appropriate under the circumstances.

(d) Following the submission of prehearing statements, the presiding officer may, upon motion or otherwise, convene a prehearing conference for the purpose of further narrowing issues and limiting the scope of the hearing if, in his or her opinion, the prehearing statements indicate lack of dispute of material fact not previously acknowledged by the parties or lack of legitimate need for cross-examination and is authorized to issue appropriate orders consistent with the purposes stated in this section. [Rule 210.]

§ 502.211 Notice of time and place of oral hearing; postponement of hearing.

(a) The notice of an oral hearing will designate the time and place the person or persons who will preside, and the type of decision to be issued. The date or place of a hearing for which notice has been issued may be changed when warranted. Reasonable notice will be given to the parties or their representatives of the time and place of the change thereof, due regard being had for the public interest and the convenience and necessity of the parties or their representatives. Notice may be served by mail, facsimile transmission, or electronic mail.

(b) Motions for postponement of any hearing date must be filed in accordance with § 502.104. [Rule 211.]

§ 502.212 Exceptions to rulings of presiding officer unnecessary.

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, the party

doing so need only state the action that it wants the presiding officer to take or that it objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made. [Rule 212.]

§ 502.213 Official transcript.

(a) The Commission will designate the official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and any briefs or memoranda of law filed therewith, will be filed with the Commission. Transcripts of testimony will be available in any proceeding under the rules in this part, at actual cost of duplication.

(b)(1) Where the Commission does not request daily copy service, any party requesting such service must bear the incremental cost of transcription above the regular copy transcription cost borne by the Commission, in addition to the actual cost of duplication. Where the requesting party applies for and demonstrates that the furnishing of daily copy is indispensable to the protection of a vital right or interest in achieving a fair hearing, the presiding officer in the proceeding in which the application is made will order that daily copy service be provided the requesting party at the actual cost of duplication, with the full cost of transcription being borne by the Commission.

(2) In the event a request for daily copy is denied by the presiding officer, the requesting party, in order to obtain daily copy, must pay the cost of transcription over and above that borne by the Commission, *i.e.,* the incremental cost between that paid by the Commission when it requests regular copy and when it requests daily copy. The decision of the presiding officer in this situation is interpreted as falling within the scope of the functions and powers of the presiding officer, as defined in § 502.25(a).

(c) Motions made at the hearing to correct the transcript will be acted upon by the presiding officer. Motions made after an oral hearing to correct the record must be filed with the presiding officer within twenty-five (25) days after the last day of hearing or any session thereof, unless otherwise directed by the presiding officer, and must be served on all parties. If no objections are received within ten (10) days after date of service, the transcript will, upon approval of the presiding officer, be changed to reflect such corrections. If objections are received, the motion will be acted upon with due consideration of the stenographic record of the hearing. [Rule 213.]

§ 502.214 Briefs; requests for findings.

(a) The presiding officer will determine the time and manner of filing briefs and any enlargement of time.

(b) Briefs will be served upon all parties pursuant to subpart H of this part.

(c) Unless otherwise ordered by the presiding officer, opening or initial briefs must contain the following matters in separately captioned sections:

(1) Introductory section describing the nature and background of the case;

(2) Proposed findings of fact in serially numbered paragraphs with reference to exhibit numbers and pages of the transcript;

(3) Argument based upon principles of law with appropriate citations of the authorities relied upon; and

(4) Conclusions.

(d) All briefs must contain a subject index or table of contents with page references and a list of authorities cited.

(e) All briefs filed pursuant to this section must ordinarily be limited to eighty (80) pages in length, exclusive of pages containing the table of contents, table of authorities, and certificate of service, unless the presiding officer allows the parties to exceed this limit for good cause shown and upon application filed not later than seven (7) days before the time fixed for filing of such a brief or reply. [Rule 214.]

§ 502.215 Requests for enlargement of time for filing briefs.

Requests for enlargement of time to file briefs must conform to the requirements of § 502.102. [Rule 215.]

§ 502.216 Supplementing the record.

A motion to supplement the record, pursuant to § 502.69, should be filed if submission of evidence is desired after the parties' presentation in a proceeding, but before issuance by the presiding officer of an initial decision. [Rule 216.]

§ 502.217 Record of decision.

The transcript of testimony and exhibits, together with all filings and motions filed in the proceeding, will constitute the exclusive record for decision. [Rule 217.]

Subpart M—Decisions; Appeals; Exceptions

■ 36. Revise the subpart M heading to read as set forth above.

■ 37. Revise § 502.221 to read as follows:

§ 502.221 Appeal from ruling of presiding officer other than orders of dismissal in whole or in part.

(a) Rulings of the presiding officer may not be appealed prior to or during the course of the hearing, or subsequent thereto, if the proceeding is still before him or her, except where the presiding officer finds it necessary to allow an appeal to the Commission to prevent substantial delay, expense, or detriment to the public interest, or undue prejudice to a party.

(b) Any party seeking to appeal must file a motion for leave to appeal no later than fifteen (15) days after written service or oral notice of the ruling in question, unless the presiding officer, for good cause shown, enlarges or shortens the time. Any such motion must contain the grounds for leave to appeal and the appeal itself.

(c) Replies to the motion for leave to appeal and the appeal may be filed within fifteen (15) days after date of service thereof, unless the presiding officer, for good cause shown, enlarges or shortens the time. If the motion is granted, the presiding officer must certify the appeal to the Commission.

(d) Unless otherwise provided, the certification of the appeal will not operate as a stay of the proceeding before the presiding officer.

(e) The provisions of § 502.10 do not apply to this section. [Rule 221.]

§ 502.222 [Removed and Reserved]

■ 38. Remove and reserve § 502.222.

■ 39. Revise § 502.230 to read as follows:

§ 502.230 Reopening by Commission.

(a) *Reopening by the Commission.* After an initial decision by the presiding officer, or in a matter otherwise pending before the Commission, but before issuance of a Commission decision, the Commission may, after petition and reply in conformity with paragraphs (b) and (c) of this section, or upon its own motion, reopen a proceeding for the purpose of taking further evidence.

(b) *Motion to reopen.* A motion to reopen shall be served in conformity with the requirements of subpart H and will set forth the grounds requiring reopening of the proceeding, including material changes of fact or law alleged to have occurred.

(c) *Reply.* Within ten (10) days following service of a motion to reopen, any party may reply to such motion.

(d) *Remand by the Commission.* Nothing contained in this rule precludes the Commission from remanding a proceeding to the presiding officer for the taking of addition evidence or determining points of law. [Rule 230.]

By the Commission.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–30745 Filed 12–21–16; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS–2016–0048]

RIN 0750–AJ18

Defense Federal Acquisition Regulation Supplement: New Qualifying Country—Estonia (DFARS Case 2017–D001)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Estonia as a qualifying country.

DATES: Effective December 22, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Lorena Malcolm, telephone 571–372–6176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to add Estonia as a qualifying country. On September 23, 2016, the Secretary of Defense signed a reciprocal defense procurement agreement with Estonia. The agreement removes discriminatory barriers to procurements of supplies and services produced by industrial enterprises of the other country to the extent mutually beneficial and consistent with national laws, regulations, policies, and international obligations. This agreement does not cover construction or construction material. Estonia is already a designated country under the World Trade Organization Government Procurement Agreement.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only updates the list of qualifying countries in the DFARS by adding the newly qualifying country of Estonia. The definition of ''qualifying country'' is updated in each of the following clauses; however, this revision does not impact the clause prescriptions for use, or applicability at or below the simplified acquisition threshold, or applicability to commercial items. The clauses are: DFARS 252.225–7001, Buy American and Balance of Payments Program; DFARS 252.225–7002, Qualifying Country Sources as Subcontractors; DFARS 252.225–7012, Preference for Certain Domestic Commodities; DFARS 252.225–7017, Photovoltaic Devices; DFARS 252.225–7021, Trade Agreements; and DFARS 252.225–7036, Buy American—Trade Agreements—Balance of Payments Program.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707 entitled ''Publication of Proposed Regulations.'' Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it does not constitute a significant DFARS revision within the meaning of FAR 1.501–1 and does not have a significant cost or administrative impact on contractors or offerors. Estonia is added to the list of 25 other countries that have similar reciprocal defense procurement agreements with DoD. These requirements affect only the internal operating procedures of the Government.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply to this rule; however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0229, entitled ''DFARS Part 225, Foreign Acquisition and related clauses.'' This rule merely shifts the category under which items from Estonia must be listed.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

225.003 [Amended]

■ 2. Section 225.003 is amended in paragraph (10), the definition of ''Qualifying country'', by adding, in alphabetical order, the country of ''Estonia''.

225.872–1 [Amended]

■ 3. Section 225.872–1 is amended in paragraph (a) by adding, in alphabetical order, the country of ''Estonia''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7001 [Amended]

■ 4. Section 252.225–7001 is amended by—

■ a. In the clause heading, removing the date ''(AUG 2016)'' and adding ''(DEC 2016)'' in its place;

■ b. In paragraph (a), the definition of ''Qualifying country'', adding, in alphabetical order, the country of ''Estonia''; and

■ c. In the Alternate I clause—
■ i. In the clause heading, removing the date ''(AUG 2016)'' and adding ''(DEC 2016)'' in its place; and
■ ii. In paragraph (a), the definition of ''Qualifying country'', adding, in alphabetical order, the country of ''Estonia''.

252.225–7002 [Amended]

■ 5. Section 252.225–7002 is amended by—
■ a. In the clause heading, removing the date ''(AUG 2016)'' and adding ''(DEC 2016)'' in its place; and
■ b. In paragraph (a), the definition of ''Qualifying country'', adding, in alphabetical order, the country of ''Estonia''.

252.225–7012 [Amended]

■ 6. Section 252.225–7012 is amended by—
■ a. In the clause heading, removing the date ''(JUL 2016)'' and adding ''(DEC 2016)'' in its place; and
■ b. In paragraph (a), the definition of ''Qualifying country'', adding, in alphabetical order, the country of ''Estonia''.

252.225–7017 [Amended]

■ 7. Section 252.225–7017 is amended by—
■ a. In the clause heading, removing the date ''(SEP 2016)'' and adding ''(DEC 2016)'' in its place; and
■ b. In paragraph (a), the definition of ''Qualifying country'', adding, in alphabetical order, the country of ''Estonia''.

252.225–7021 [Amended]

■ 8. Section 252.225–7021 is amended by—
■ a. In the clause heading, removing the date ''(SEP 2016)'' and adding ''(DEC 2016)'' in its place;
■ b. In paragraph (a), the definition of ''Qualifying country'', adding, in alphabetical order, the country of ''Estonia''; and
■ c. In the Alternate II clause—
■ i. In the clause heading, removing the date of ''(SEP 2016)'' and adding ''(DEC 2016)'' in its place; and
■ ii. In paragraph (a), the definition of ''Qualifying country'', adding, in alphabetical order, the country of ''Estonia''.

252.225–7036 [Amended]

■ 9. Section 252.225–7036 is amended by—
■ a. In the clause heading, removing the date ''(AUG 2016)'' and adding ''(DEC 2016)'' in its place;
■ b. In paragraph (a), the definition of ''Qualifying country'', adding, in alphabetical order, the country of ''Estonia'';
■ c. In the Alternate I clause—
■ i. In the clause heading, removing the date ''(AUG 2016)'' and adding ''(DEC 2016)'' in its place; and
■ ii. In paragraph (a), the definition of ''Qualifying country'', adding, in alphabetical order, the country of ''Estonia'';
■ d. In the Alternate II clause—
■ i. In the clause heading, removing the date ''(AUG 2016)'' and adding ''(DEC 2016)'' in its place; and
■ ii. In paragraph (a), the definition of ''Qualifying country'', adding, in alphabetical order, the country of ''Estonia'';
■ e. In the Alternate III clause—
■ i. In the clause heading, removing the date ''(AUG 2016)'' and adding ''(DEC 2016)'' in its place; and
■ ii. In paragraph (a), the definition of ''Qualifying country'', adding, in alphabetical order, the country of ''Estonia'';
■ f. In the Alternate IV clause—
■ i. In the clause heading, removing the date ''(AUG 2016)'' and adding ''(DEC 2016)'' in its place; and
■ ii. In paragraph (a), the definition of ''Qualifying country'', adding, in alphabetical order, the country of ''Estonia''; and
■ g. In the Alternate V clause—
■ i. In the clause heading, removing the date ''(AUG 2016)'' and adding ''(DEC 2016)'' in its place; and
■ ii. In paragraph (a), the definition of ''Qualifying country'', adding, in alphabetical order, the country of ''Estonia''.

[FR Doc. 2016–30598 Filed 12–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 232

[Docket DARS–2016–0009]

RIN 0750–AI90

Defense Federal Acquisition Regulation Supplement: Contract Financing (DFARS Case 2015–D026)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) by providing that contracting officers are not required to further justify a decision to provide customary contract financing, other than loan guarantees and advance payments identified in FAR part 32, for certain fixed-price contracts.

DATES: Effective December 22, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, telephone 571–372–6099.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 81 FR 42607 on June 30, 2016, to revise the DFARS regarding the use of customary contract financing, other than loan guarantees and advance payments identified in FAR part 32, on fixed-price contracts with a period of performance in excess of one year that meet the dollar thresholds established in FAR 32.104(d). DoD has determined that the use of such customary contract financing provides improved cash flow as an incentive for commercial companies to do business with DoD, is in the Department's best interest, and requires no further justification of its use.

II. Discussion and Analysis

No public comments were submitted in response to the proposed rule. Therefore, there are no changes from the proposed rule made in the final rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This final rule only provides DoD policy regarding providing contract financing for certain fixed-priced contracts. The rule does not add any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

The objective of the rule is to clarify that the use of certain customary contract financing does not require further justification, as it has been determined to be in DoD's best interest for fixed-price contracts with a period of performance in excess of one year that meet the dollar thresholds in FAR 32.104(d).

DoD does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This rule only changes processes that are internal to the Government and does not have any impact on small entities.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

There is no change to reporting or recordkeeping as a result of this rule.

There are no known significant alternative approaches to the rule that would meet the requirements.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 232

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 232 is amended as follows:

PART 232—CONTRACT FINANCING

■ 1. The authority citation for part 232 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Add section 232.104 to subpart 232.1 to read as follows:

232.104 Providing contract financing.

For fixed-price contracts with a period of performance in excess of a year that meet the dollar thresholds established in FAR 32.104(d), and for solicitations expected to result in such contracts, in lieu of the requirement at FAR 32.104(d)(1)(ii) for the contractor to demonstrate actual financial need or the unavailability of private financing, DoD has determined that—

(1) The use of customary contract financing (see FAR 32.113), other than loan guarantees and advance payments, is in DoD's best interest; and

(2) Further justification of its use in individual acquisitions is unnecessary.

[FR Doc. 2016–30596 Filed 12–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 161017970–6999–02]

RIN 0648–XE976

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2017–2018 Summer Flounder Specifications and Announcement of 2017 Summer Flounder and Black Sea Bass Commercial Accountability Measures

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

ACTION: Final rule.

SUMMARY: In this rule, NMFS issues revised final 2017 and 2018 specifications for the summer flounder fishery, which include commercial and recreational catch limits and prohibit federally permitted commercial fishing vessels from landing summer flounder in Delaware in 2017 due to continued quota repayment from previous years' overages. NMFS also announces a black sea bass commercial accountability measure that revises the 2017 annual catch target and commercial quota to account for a catch overage in 2015. These actions are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, and to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act. The intent of this action is to establish harvest levels and other management measures based on updated scientific information to ensure that summer flounder are not overfished or subject to overfishing in 2017 and 2018, and to enact the catch limit adjustments that are required by the fishery management plan.

DATES: Effective January 1, 2017, through December 31, 2018.

ADDRESSES: Copies of the specifications document, consisting of a supplemental environmental assessment (SEA), Initial Regulatory Flexibility Analysis (IRFA), other supporting documents used by the Mid-Atlantic Fishery Management Council and its committees, and the original environmental assessment for the 2016–2018 summer flounder, scup, and black sea bass specifications are available from Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at *http://www.greateratlantic.fisheries.noaa.gov.* The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, Greater Atlantic Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, (978) 281–9244.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations outline the Council's process for establishing specifications. Specifications in these fisheries include various catch and landing subdivisions, such as the commercial and recreational sector annual catch limits (ACLs), annual catch targets (ACTs), and sector-specific landing limits (*i.e.,* the commercial fishery quota and recreational harvest limit). Annual specifications may be established for three-year periods, and, in interim years, specifications are reviewed by the Council to ensure previously established multi-year specifications remain appropriate. The FMP and its implementing regulations also outline the Council's process for establishing specifications. Requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), including the 10 national standards, also apply to specifications.

The most recent specifications for summer flounder, scup, and black sea bass fisheries were established in a December 28, 2015, final rule (80 FR

80689) that set catch limits for all three species for 2016 through 2018. At that time, the 2015 summer flounder stock assessment update indicated that the stock size was declining and that overfishing was occurring in 2014 (see the November 9, 2015, proposed rule, 80 FR 69179, and also the November 15, 2016, proposed rule for this action, 81 FR 80038). The Council and NMFS expected these specifications would end overfishing on summer flounder and allow for stock growth. The background for establishing the 2016–2018 specifications, including the results of the 2015 assessment update, are outlined in the proposed and final rules for the December 2015 specifications rulemaking, and are not repeated here. When recommending those specifications, the Council and its Scientific and Statistical Committee (SSC) requested a stock assessment update in July 2016 to determine if the previously recommended acceptable biological catches (ABCs) and subsequent catch limits remain appropriate for 2017 and 2018. The Council and its SSC reviewed that assessment update when it became available in July 2016.

As detailed in the proposed rule (81 FR 80038, November 15, 2016), the 2016 assessment update indicates that overfishing of the summer flounder stock continued through 2015 and the stock has continued its decline. As a result, catch limits need to be lowered to end overfishing and minimize the risk that the stock will become overfished. The assessment update noted that the consistent pattern in both underestimation of fishing mortality and overestimation of spawning stock biomass and recruitment is continuing, even though catches have not substantially exceeded ABC levels. In retrospect, these over and underestimates provided overly optimistic outlooks for the stock and resulted in recommended catch levels that have allowed overfishing to continue, even though catches have not frequently or excessively exceeded catch limits. Stated simply, the information from the latest assessment update made clear that catch advice, including the initial 2016–2018 catch limits, has been set too high. Based on this information regarding the status of the summer flounder stock, as updated to include data from 2015, this final rule revises the previously established summer flounder specifications for the 2017 and 2018 fishing years. Another assessment update will be available next summer, and notice will be provided in the **Federal Register** on whether the revised 2018 specifications will remain in place or be further updated based on any new information.

NMFS will establish the 2017 recreational management measures (*i.e.,* minimum fish size, possession limits, and fishing seasons) for summer flounder, scup, and black sea bass by publishing proposed and final rules in the **Federal Register** in late winter/early spring 2017.

Revised 2017–2018 Summer Flounder Specifications

This rule implements the Council's revised ABC recommendations and the commercial and recreational catch limits for fishing years 2017 and 2018 (Table 1), as outlined in the proposed rule.

As discussed in the proposed rule, the revised 2017 ABC and associated commercial and recreational catch limits are approximately 30 percent lower than those previously established for 2017 ABC. The revised 2018 ABC and associated catch limits are 16 percent lower than those previously established for 2018. These ABC revisions follow the Council's standard risk policy based on the recalculated overfishing limits (OFLs) recommended by the assessment update.

This action makes no other changes to the Federal commercial summer flounder management measures.

TABLE 1—SUMMARY OF THE REVISED 2017–2018 SUMMER FLOUNDER SPECIFICATIONS

	2016 (current)		2017		2018	
	million lb	mt	million lb	mt	million lb	mt
OFL	18.06	8,194	16.76	7,600	18.69	8,476
ABC	16.26	7,375	11.30	5,125	13.23	5,999
ABC Landings Portion	13.54	6,142	9.43	4,278	11.05	5,010
ABC Discards Portion	2.72	1,233	1.87	847	2.18	989
Commercial ACL	9.43	4,275	6.57	2,982	7.70	3,491
Commercial ACT	9.43	4,275	6.57	2,982	7.70	3,491
Projected Commercial Discards	1.30	590	0.92	415	1.07	485
Commercial Quota	8.12	3,685	5.66	2,567	6.63	3,006
Recreational ACL	6.84	3,100	4.72	2,143	5.53	2,508
Recreational ACT	6.84	3,100	4.72	2,143	5.53	2,508
Projected Recreational Discards	1.42	643	0.95	432	1.11	504
Recreational Harvest Limit	5.42	2,457	3.77	1,711	4.42	2,004

Table 2 summarizes the commercial summer flounder quotas for each state. As mentioned in the proposed rule, this final rule announces any necessary commercial state quota overage reductions necessary for fishing year 2017. Table 2 includes percent shares as outlined in 50 CFR 648.102(c)(1)(i), the resultant 2017 commercial quotas, quota overages (as needed), and the final adjusted 2017 commercial quotas. The 2016 quota overage is determined by comparing landings for January through October 2016, plus any 2015 landings overage that was not previously addressed in the 2016–2018 specifications, for each state. For Delaware, this includes continued repayment of overharvest from previous years. Table 3 presents the initial 2018 quota by state. The 2018 state quota allocations are preliminary and are subject to change if there are overages of states' quotas carried over from a previous fishing year. Notice of any commercial quota adjustments to account for overages will be published in the **Federal Register** prior to the start of the 2018 fishing year.

TABLE 2—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER QUOTAS FOR 2017

State	FMP percent share	2017 Initial quota		Overages through October 31, 2016		Adjusted 2017 quota, less overages *	
		lb	kg	lb	kg	lb	kg
Maine	0.04756	2,692	1,221	0	0	2,692	1,221
New Hampshire	0.00046	26	12	0	0	26	12
Massachusetts	6.82046	385,988	175,081	0	0	385,988	175,081
Rhode Island	15.68298	887,542	402,582	0	0	887,542	402,582
Connecticut	2.25708	127,734	57,939	0	0	127,734	57,939
New York	7.64699	432,764	196,298	0	0	432,764	196,298
New Jersey	16.72499	946,512	429,331	0	0	946,512	429,330
Delaware	0.01779	1,007	457	−49,365	−22,392	−48,358	−21,935
Maryland	2.0391	115,398	52,344	0	0	115,398	52,344
Virginia	21.31676	1,206,372	547,201	0	0	1,206,372	547,201
North Carolina	27.44584	1,553,233	704,535	0	0	1,553,233	704,535
Total	100	5,659,266	2,567,000	0	0	5,658,260	2,566,544

Notes: Kilograms are as converted from pounds and may not necessarily add due to rounding. Total quota is the sum for all states with an allocation. A state with a negative number has a 2017 allocation of zero (0). Total adjusted 2017 quota, less overages, does not include negative allocations (*i.e.,* Delaware's overage).

TABLE 3—2018 INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	FMP percent share	2018 Quota	
		lb	kg
Maine	0.04756	3,152	1,430
New Hampshire	0.00046	30	14
Massachusetts	6.82046	451,998	205,023
Rhode Island	15.68298	1,039,326	471,430
Connecticut	2.25708	149,579	67,848
New York	7.64699	506,773	229,868
New Jersey	16.72499	1,108,381	502,753
Delaware	0.01779	1,179	535
Maryland	2.0391	135,133	61,295
Virginia	21.31676	1,412,682	640,782
North Carolina	27.44584	1,818,862	825,022
Total	100	6,627,096	3,006,000

Delaware Summer Flounder Closure

Table 2 shows that, for Delaware, the amount of overharvest from previous years is greater than the amount of commercial quota allocated to Delaware for 2017. As a result, there is no quota available for 2017 in Delaware. The regulations at 50 CFR 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the NMFS Greater Atlantic Region Administrator has determined no longer has commercial quota available for harvest. Therefore, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits are prohibited for the 2017 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2017 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

Accountability Measure Quota Adjustment Announcements

Black Sea Bass

Each year, NMFS publishes a notice, either in combination with the specifications final rule or separately, to inform the public and the states of any commercial summer flounder, scup, or black sea bass overages that are deducted from a fishing year's allocations for the start of the fishing year. This final rule is announcing an 2017 accountability measure for the black sea bass commercial fishery, as required by the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan and in compliance with the regulations at 50 CFR 648.143.

In 2015, due to an overage of the commercial quota and higher-than-anticipated discards, the commercial fishery exceeded its ACL. The fishery exceeded its 2015 commercial quota by 3.8 percent. However, estimated commercial dead discards of 523.3 mt were much higher than projected (166 mt), accounting for 44.4 percent of the total catch for 2015. We currently estimate that 100 percent of black sea bass caught in trawls and gillnets die post release, with that estimate lowered to 15 percent for black sea bass caught in commercial hook and line and commercial fish pots. In the event that the commercial ACL has been exceeded and the overage cannot be accommodated through the landings-based accountability measure, the regulations at § 648.143(b) require that the exact amount of the overage, in pounds, be deducted from a subsequent single year's commercial ACL. The 2017 commercial ACT is reduced by 849,363 lb (385 mt) from 3,148,200 lb (1,428 mt) to 2,298,837 lb (1,043 mt). After estimated commercial discards are removed (436,515 lb; 198 mt), the 2017 commercial quota is 1,862,322 lb (845 mt).

The results of a new black sea bass benchmark stock assessment has undergone peer review and a final report will be available for review by the SSC and the Council later this winter. Should the information provided by this assessment indicate a need to revise the 2017 black sea bass specifications, we will work with the Council to publish a mid-year adjustment in the **Federal Register**. These accountability measures will be reevaluated based on any information the assessment may provide and any updated 2015 catch information, if available, would be incorporated at that time.

The 2017 commercial and recreational black sea bass catch limits are outlined in Table 4. The recreational catch limits are unchanged from the December 2015 rulemaking.

TABLE 4—REVISED BLACK SEA BASS 2017 SPECIFICATIONS FOLLOWING ACCOUNTABILITY MEASURE ADJUSTMENTS

	2017	
	million lb	mt
Commercial ACL	3.15	1,428
Commercial ACT [1]	2.30	1,043
Projected Commercial Discards	0.44	198
Commercial Quota [1]	1.86	845
Recreational ACL	3.52	1,597
Recreational ACT	3.52	1,597
Projected Recreational Discards	0.70	317
Recreational Harvest Limit	2.82	1,280

[1] Incorporates reductions for 2015 overages.

Scup

No commercial scup quota overage is applicable to 2017; therefore, no adjustments to the previously implemented 2017 quota or possession limits are necessary. The 2017 catch limits are repeated in this preamble for ease of reference. Notification will be published in the **Federal Register** prior to the start of the 2018 fishing year of the previously established scup quotas. This notice will include any necessary commercial quota revision or ACL accountability measure should the 2016 scup quota be exceeded.

The 2017 commercial and recreational catch limits established in the December 2015 rulemaking are outlined in Table 5.

TABLE 5—SCUP 2017 SPECIFICATIONS

	2017	
	million lb	mt
Commercial Annual Catch Limit and Annual Catch Target	22.15	10,047
Recreational Annual Catch Limit and Annual Catch Target	6.25	2,834
Commercial Quota	18.38	8,337
Recreational Harvest Limit	5.50	2,495

The 2017 scup commercial quota is divided into three commercial fishery quota periods, as outlined in Table 6.

TABLE 6—COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2017 BY QUOTA PERIOD

Quota period	Percent share	2017 Initial quota	
		lb	mt
Winter I	45.11	8,291,190	3,761
Summer	38.95	7,158,986	3,247
Winter II	15.94	2,929,762	1,329
Total	100.0	18,379,939	8,337

Note: Metric tons are as converted from pounds and may not necessarily total due to rounding.

The quota period possession limits are unchanged from the December 2015 rulemaking.

Comments and Responses

On November 15, 2016, NMFS published the proposed summer flounder specifications for public notice and comment. NMFS received 1,231 comments from individuals, as well as comment letters from the Recreational Fisheries Alliance (RFA), the Jersey Coast Anglers Association, On The Water L.L.C., and the Marine Trades Association of New Jersey. Only the comments relating to the proposed 2017 and 2018 summer flounder specifications, including the analyses used to support them, are responded to below.

We received numerous comment letters that mentioned summer flounder recreational management measures. The Council and Commission are currently reviewing necessary 2017 recreational management measures for summer flounder, scup, and black sea bass. Rulemaking for those decisions will occur in a separate action in early spring 2017 and the public can comment on the proposed recreational management recommendations at that time.

Many comments relevant to this action used similar language or themes; therefore, the significant issues and concerns have been summarized and responded to here. No changes to the proposed specifications were made as a result of these comments. The specifications are based on the Council's recommendation which, in turn, was based on the SSC's advice and application of the Council Risk Policy to the best available scientific information.

Comment 1: Many commenters stated that quota cuts are unnecessary because there is an abundance of summer flounder. Some stated they do not believe in the results from the various fishery independent surveys.

Response: NMFS disagrees. The prevailing information from the assessment and multiple fish surveys indicate a continual decline in abundance over the past few years. The Northeast Fisheries Science Center (NESFC) performed a summer flounder stock assessment update in June 2016. This update used the peer-reviewed model developed and accepted during the most recent benchmark assessment completed and reviewed during the 57th Stock Assessment Workshop and Stock Assessment Review Committee (SAW/SARC 57). The Council's SSC used the results of the assessment update in developing its 2017 and 2018 ABC recommendations.

Spawning Stock Biomass (SSB) in the assessment update was estimated to be 36,240 mt, based on information through 2015, the most recent complete

year of fishery dependent and independent data. The assessment update indicates that the summer flounder stock, as indicated by SSB, has declined in size each year for the past six years.

An extensive survey data set is used in the summer flounder assessment model. These surveys span both state and Federal waters, are conducted at varying times of the year, and provide information on both young-of-the-year (YOY) and adult summer flounder distribution. Surveys include: Age compositions from the NEFSC winter, spring, and fall, Massachusetts spring and fall; Rhode Island fall and monthly fixed; Connecticut spring and fall; Delaware; New York; New Jersey; Virginia Institute of Marine Science (VIMS) surveys. Aggregate indices of stock abundance from the University of Rhode Island trawl survey and NEFSC larval surveys, and recruitment indices (YOY) from surveys conducted by the states of Massachusetts, Delaware, Maryland, and Virginia are also used in the model calibration.

The Council's SSC noted that a downward trend is evident in the majority of these surveys' stock indices, including recruitment, since 2011. In addition to considering the information on stock abundance, the SSC considered updated information on fishing mortality and recruitment estimates, fishery performance, and risk of depleting the stock to an overfished condition. Based on this evaluation and application of the Council's Risk Policy, the SSC noted a clear need to reduce catch in 2017 and 2018 from levels previously recommended in order to end overfishing and ensure the stock does not become overfished. The Council considered these recommendations and the SSC's rationale and agreed, recommending the catch levels being implemented by NMFS in this rule.

NMFS acknowledges there is the possibility for potential changes in availability of fish to some surveys and to the fishery as a result of changes in the distribution of the summer flounder population. However, the available information provided by the assessment update deriving biomass estimates from multiple sources indicate the summer flounder stock is, in fact, in decline and in need of further conservation, consistent with the recommendations of the Council and its SSC to end overfishing and to prevent the stock from becoming overfished. Therefore, we are implementing the measures outlined in this rule's preamble.

Comment 2: Many commenters stated that the most recent summer flounder benchmark assessment is outdated and incorrect. While some offered no specifics as to why they believe this to be true, others stated that stock assessment has failed to keep pace with the changes being observed in the stock as it continues to expand and move north and east. Some stated that although summer flounder is one of the best assessed fisheries in the Mid-Atlantic region, significant and rapid changes are being experienced in the summer flounder stock and the frequency of benchmark assessments has not kept pace. As a result, they cannot support any reductions to the summer flounder ABC until a benchmark assessment is conducted.

Response: NMFS agrees that summer flounder is one of the best assessed fisheries in the Mid-Atlantic. Detailed information on the frequency of benchmark, operational, and updates to assessments can be found on the NEFSC Web site at: *http://www.nefsc.noaa.gov/saw/*.

The 2017 and 2018 summer flounder specifications are based on an update to the 2013 peer-review accepted benchmark assessment model. That is, updated fishery independent survey information (see response to Comment 1) and fishery dependent information (commercial and recreational catch) through 2015 were used to re-run the assessment model to provide updated stock advice for the SSC and Council to consider. While a benchmark assessment typically considers new or alternative modeling approaches and stock assumptions, the core fishery data sets—surveys and catch data—are already very expansive for summer flounder.

While it is possible that a benchmark assessment, if developed, may derive a different perception of stock status, NMFS, the Council and its SSC all determined the available information was reliable and appropriate for use, consistent with National Standard 2, to establish the catch limits from which these specifications are derived. Another assessment update is scheduled for 2017, which will provide the opportunity to review the adequacy of the catch limits implemented in this final rule for fishing year 2018.

The next benchmark assessment will be scheduled through the Northeast Region Coordinating Council (NRCC). This group, comprised of senior leaders of both the New England and Mid-Atlantic Councils, the Atlantic States Marine Fisheries Commission, NMFS Greater Atlantic Regional Fisheries Office and the NEFSC, develops an agreed schedule for assessments based on need, available resources, and, importantly, advances in available information. This schedule is reviewed on a biannual basis and updates are considered at those times. There is very little value in developing benchmark assessments if additional information or advances in science have not occurred since the last benchmark was conducted. The NRCC will discuss assessment scheduling in the late spring and fall of 2017.

Comment 3: We received comments from 841 people through a form letter stating that new science from Cornell University will help inform a more accurate stock assessment for summer flounder. These commenters mentioned that a new benchmark stock assessment is expected in early 2017, which would replace the out-of-date 2013 assessment that is currently used. They stated that because this new information will provide a more accurate indication of the true health of the fishery, NMFS should delay such a drastic and potentially catastrophic reduction until the new stock assessment, that incorporates the science from Cornell, is complete. Other comments alluded more generally to wanting new information incorporated in the stock assessment.

Response: NMFS disagrees and clarifies that the commenters are incorrect regarding a benchmark assessment (see response to Comment 2). There is currently no benchmark stock assessment scheduled for summer flounder in early 2017. Commenters may be confusing this with the black sea bass benchmark assessment that was recently completed and peer-reviewed. The Council's SSC has requested to review another summer flounder assessment update (*i.e.,* adding 2016 survey and fishing data to the existing assessment model) next summer to review the status of the stock and see if adjustments to the 2018 ABC recommendation should be made. In order for such an assessment to produce new results (*e.g.,* revised biological reference points), new scientific information, such as the final results of the Cornell study, is necessary. Once that information is available, the NRCC may schedule an assessment, as described in response to Comment 2 above.

The Council and its SSC, as well as NMFS, are obligated by National Standard 2 of the Magnuson-Stevens Act to make use of the best available scientific information. The current assessment update, incorporating information from the 2015 fishing year, is the best available scientific information. This information informs us that the stock is subject to

overfishing, that projections of fishing mortality have been frequently underestimated while stock and recruitment and biomass projections have been overly optimistic, and that overall the stock is close to an overfished condition. Based on this information, catch reductions are necessary to end overfishing and ensure the stock does not become overfished. If the stock becomes overfished, the Council would be required to establish a formal rebuilding program, as outlined in the Magnuson-Stevens Act.

Comment 4: The Jersey Coast Anglers Association stated that SSB_{msy} (*i.e.,* the stock biomass target) is at too high a level and that the summer flounder fishery would be sustainable even with a much smaller biomass.

Response: NMFS disagrees that the SSB_{msy} biomass target is too high. As previously mentioned, the SSB in the assessment update was estimated to be 36,240 mt, based on information through 2015, the most recent complete year of fishery dependent and independent data. The assessment update indicates that the summer flounder stock, as indicated by SSB, has declined in size each year for the past six years. The update estimated that SSB is at 58 percent of maximum sustainable yield (SSB_{msy}) and only 16 percent above the minimum stock size threshold (½ SSB_{msy}). If SSB estimates fall below this threshold, the stock is considered overfished and must be put into a formal rebuilding program.

Comment 5: Ten commenters were supportive of the proposed quota cuts. Some noted that they have noticed a decline in summer flounder abundance in the last few years.

Response: NMFS agrees and is implementing the proposed quotas for the reasons outlined in the preamble to this rule.

Comment 6: Numerous commenters, including the RFA, recommended that NMFS approve an ABC of 16.26 million lb (7,375 mt) for both years (*i.e.,* the current 2016 ABC). Others recommended maintaining the previously established ABCs for 2017 and 2018. The RFA commented that NMFS is not bound to the same requirement as the Council to develop ACLs that do not exceed the recommendation of its SSC. The RFA also stated that the Council's risk policy is too precautionary for the summer flounder stock and that it is not in the best interest of the Council or the fishing industry to defer all authority to manage risk to the SSC. The RFA stated that NMFS is able to set 2017 and 2018 summer flounder ABCs that are equal to but not exceeding the OFLs derived in the assessment update.

Response: NMFS disagrees that it would be appropriate for the agency to unilaterally implement ABCs that are higher than those recommended by the Council. Section 302(h)(6) of the Magnuson-Stevens Act provides that a Council may not develop ACLs that exceed the ABC recommendations of its SSC. The statute does not explicitly address whether NMFS may establish catch limits in excess of those recommendations. However, it is unnecessary in this instance for NMFS to resolve this question of statutory interpretation, as NMFS has concluded that the Council and its SSC's recommendations reflect the best available scientific information, and are well-founded and consistent with the requirements of the Magnuson-Stevens Act. NMFS, in reviewing the Council's recommendations, finds that its SSC did appropriately interpret and make use of the available stock assessment information and the Council's recommendation to NMFS was based on the ABC advice from the SSC.

The SSC's meeting report (available from the Mid-Atlantic Council at: *https://goo.gl/817OeI*) indicates a thorough and deliberate process to fully address the terms of reference established for creating ABC advice, including application of the Council's Risk Policy. The SSC received detailed information on the assessment update and was able to ask direct questions to both Council and NEFSC staff that have familiarity and expertise with the summer flounder assessment and fishery management plan. Moreover, the SSC, in compiling its advice to the Council, noted several substantial concerns about the status of the stock in regards to persistent overfishing, likelihood of the stock becoming overfished if catches are not reduced, and the overall poor status of the stock.

Given that there is a very clear record supporting the SSC's ABC derivation process as well as a clear record that the Council used the SSC recommendations appropriately and consistently with National Standard 2 to meet the intent of National Standard 1 to prevent overfishing, NMFS finds it would be wholly inappropriate in this instance to establish catch limits higher than those recommended by the Council and its SSC. Moreover, setting ABC equal to OFL would remove any consideration of scientific and management uncertainty to the summer flounder stock/fishery. The SSC's report and the benchmark assessment model outline several sources of uncertainty for the summer flounder stock assessment. As a result, it would be inappropriate for NMFS to assume there is no need to offset ABC from OFL.

Comment 7: Many mentioned that the summer flounder recreational harvest limit will be reduced up to 40 percent due to estimated declines in the stock and because the recreational sector is estimated to have exceeded its 2016 harvest limit. They recommended that NMFS assume that the recreational sector met, but did not exceed its recreational harvest of 5.42 million lb (2,458 mt) in 2016.

Response: This action will reduce the 2017 recreational harvest limit by approximately 30 percent from the 2016 limit (from 5.42 million lb (2,457 mt) to 3.77 million lb (1,711 mt)). NMFS clarifies that any additional reduction necessary to prevent an overage of the 2017 recreational harvest limit due to estimated 2016 overages will be determined after the end of the 2016 fishing year and announced through rulemaking that will establish the 2017 summer flounder, scup, and black sea bass recreational management measures. Although preliminary Marine Recreational Information Program estimates indicate that 2016 recreational harvest limit overages may necessitate a total reduction closer to 40 percent, this amount is subject to change and may ultimately be greater or less than that amount. As for the suggestion to assume the recreational sector met but did not exceed its recreational harvest limit for 2016, the Council must recommend, and NMFS is required to implement, recreational management measures that will constrain landings to the recreational harvest limit for a given fishing year. If data show that the fishery exceeded its limit in 2016, this informs the Council and NMFS about the extent to which adjustments to recreational management measures are needed to appropriately constrain catch in 2017. The determination of any 2016 overage, and how that will affect 2017 recreational management measures, is outside the scope of this action. A separate notice-and-comment rulemaking for the 2017 recreational summer flounder management measures will be conducted in late winter/early spring of 2017.

Comment 8: The majority of commenters mentioned that these catch limit reductions would be very difficult for the fishing industry, particularly the recreational sector, and coastal communities. Some stated that these cuts are occurring with no consideration to the communities who depend on summer flounder fishing for their livelihoods. Others noted their concerns that these cuts would likely drive them

out of business. Some recreational anglers stated they would no longer fish if these cuts resulted in lower bag limits, higher minimum sizes, or shorter seasons.

Response: NMFS recognizes that these revised summer flounder catch limits, representing nearly a 30-percent decrease from 2016 catch levels, will result in constrained recreational and commercial fisheries. The Council's SEA and Regulatory Flexibility Act Analysis provides information on the potential impacts of these reductions for each fishery. As for the recreational fishery, the effects of specific recreational management measures (*i.e.,* bag limits, size limits, and seasonal closures) will be described and analyzed in the action that implements those measures in 2017. The overall potential revenue reduction associated with the 2017 commercial quota reduction is approximately $7.7 million. Catch limits must meet conservation objectives and satisfy applicable Magnuson-Stevens Act requirements to end overfishing and prevent fish stocks from becoming overfished, even if they result in negative economic impacts. The Council selected the ABC recommended by the SSC, which is the highest possible ABC allowed that will end overfishing. The Council based its recommendations for the 2017 and 2018 summer flounder catch limits on the advice of its SSC, which, as explained further in response to previous comments, represents the best scientific information available.

Comment 9: One commenter encouraged NMFS to hold more meetings in different areas so that more fishermen could participate.

Response: The public had the opportunity to provide comments during the development of the 2017 and 2018 catch limits at the following meetings:

- Summer Flounder, Scup, and Black Sea Bass Monitoring Committee Meeting; July 25, 2016 (webinar);
- Summer Flounder, Scup, and Black Sea Bass Advisory Panel Meetings; July 29, 2016 (webinar);
- Joint Council and Commission meeting to develop 2017 and 2018 catch limit recommendations; August 9, 2016 (Virginia Beach, VA).

Additionally, there have been opportunities to comment on the development of 2017 recreational management measures at the following meetings:

- Summer Flounder, Scup, and Black Sea Bass Monitoring Committee Meetings; November 9–10, 2016 (Baltimore, MD);
- Summer Flounder, Scup, and Black Sea Bass Advisory Panel Meeting; November 17, 2016 (webinar);
- Joint Council and Commission meeting to develop 2017 recreational management measure recommendations; December 12–15, 2016 (Baltimore, MD).

These meetings are scheduled by the Council, which is responsible for the development of catch recommendations to NMFS. Council-related meetings are generally held annually at similar dates and are accessible through webinar. NMFS encourages interested parties to check the Council's Web site for information on how to access upcoming meetings (*http://www.mafmc.org*).

Furthermore, the measures of this rule have been subject to public comment through proposed rulemaking, as required under the Administrative Procedure Act.

Comment 10: A few commenters noted frustration that overfishing did not occur in their states, either recreationally or commercially, and questioned why fishermen from that state are being punished for overfishing that occurred in other states.

Response: In the case of summer flounder, overfishing is not the result of states exceeding individual commercial quotas or recreational targets, but rather results from the coastwide sector allocations being set at a level that is not sustainable for the stock overall. Based on the retrospective patterns in the assessment that have continually underestimated previous years' fishing mortality and overestimated stock size and recruitment, catch limits have been set at optimistic, higher levels. While catch has largely stayed within these levels, further evaluation indicates that the catch limits themselves for prior years, including 2016 and those previously established for 2017 and 2018, were set too high and overfishing and stock depletion continued as a result. This is why the SSC recommended a substantial reduction for 2017 and 2018 to adjust for and correct this persistent catch setting error and to end the cycle of overfishing. NMFS agrees with the Council's recommendation based on the ABC advice of its SSC and we are implementing the revised, lower ABCs outlined in the preamble as a result.

Comment 11: Numerous commenters implied that the summer flounder management measures are partial to the commercial industry. One issue of particular concern raised by commenters is that the commercial minimum size limit is smaller than those established for the recreational sector. Additionally, some stated the catch limits were allocated unfairly and the commercial fishery's landings limits should be reduced. Many commented that the commercial fishing industry is negatively affecting the resource more than the recreational sector, particularly with respect to discarding. Many suggestions on commercial management measures were suggested (*e.g.,* prohibit commercial fishing within 10 miles of the coastline, limit the amount of commercial fishing allowed in the winter months around summer flounder spawning grounds, *etc.*).

Response: The Council evaluated the available fishery performance data and decided not to recommend adjusting the commercial minimum summer flounder size or other commercial fishery measures as part of the 2017 and 2018 specifications revision. Because NMFS' authority is to approve, partially approve, or disapprove Council-recommended measures, the commenters' suggestions for changes to the commercial fishery are outside the scope of this action. The Council can consider annual changes to several management measures, including commercial minimum fish size, during its specification setting process that typically occurs at the August meeting. NMFS encourages those with concerns about the commercial fishery voice those issues directly to the Council during the appropriate specifications development cycle in 2017. The Council, working with the Commission, is currently developing a summer flounder amendment that is potentially reviewing state-by-state commercial and sector allocations. NMFS encourages commenters to stay involved with the Council process during this amendment's development. Other management measures, such as seasonal closures or prohibiting fishing within certain areas, must also be considered through Council and Commission actions and are outside the scope of this action.

Comment 12: One commenter mentioned the need for more enforcement, stating that too many people are keeping undersized fish or exceeding their bag limits.

Response: NMFS agrees that adequate enforcement is essential to help ensure catch limits are effective and we will continue to work closely with our state partners under our joint enforcement agreements. NMFS encourages people to call the NMFS Office of Law Enforcement's hotline at (800) 853–1964 if they witness illegal fishing activity.

Comment 13: One commenter suggested that observer data be reviewed and the specifications should

be updated appropriately following that review.

Response: The commercial discard estimates using observer data are included in the annual stock assessment updates that are utilized in deriving OFL recommendations; therefore, observer data have already been reviewed and incorporated into these specifications.

Comment 14: Four commenters mentioned concerns over the impact of foreign fishing in U.S. waters and its impact on the summer flounder stock.

Response: NMFS agrees that it is important to minimize the impact of foreign fishing vessels in the U.S. Exclusive Economic Zone (EEZ), which is why Congress enacted the Magnuson-Stevens Act in 1976. The Magnuson-Stevens Act prohibited foreign fishing within the EEZ, except under special circumstances. There is currently no impact from foreign fishing on summer flounder within the EEZ.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that this final rule is necessary for the conservation and management of the summer flounder fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure that the final specifications are in place on January 1, 2017. This action establishes the final specifications (*i.e.,* annual catch limits) for the summer flounder and the final commercial quota for the black sea bass fishery for the 2017 fishing year, which begins on January 1, 2017.

This rule is being issued at the earliest possible date. Preparation of the proposed rule by NMFS was dependent on the submission of the SEA/IRFA in support of the specifications that is developed by the Council. A complete document was received by NMFS in mid-October 2016. Documentation in support of the Council's recommended specifications is required for NMFS to provide the public with information from the environmental and economic analyses, as required for rulemaking, and to evaluate the consistency of the Council's recommendation with the Magnuson-Stevens Act and other applicable law. The proposed rule published on November 15, 2016, with a 15-day comment period ending November 30, 2016. Publication of the summer flounder specification at the start of the fishing year that begins January 1 of each fishing year, is required by the order of Judge Robert Doumar in *North Carolina Fisheries Association* v. *Daley.* Although there are currently established 2017 commercial and recreational catch limits for summer flounder, fishing at these levels would result in overfishing of the stock. The existing catch limits need to be replaced by the catch limits implemented through this action, which represent a necessary 30-percent reduction.

If the 30-day delay in effectiveness is not waived, the catch limit currently in place for the summer flounder fishery on January 1, 2017, will be too high, will be inconsistent with the prevailing scientific advice, and will perpetuate overfishing on the stock in a period of consistently poor recruitment, representing a substantial risk to the stock. Allowing fishing at this level is inconsistent with the Magnuson-Stevens Act, National Standard 1, and National Standard 2. The summer flounder fishery is expected, based on historic participation and harvest patterns, to be very active at the start of the fishing season in 2017. Without these revised specifications in place on January 1, 2017, individual states will not be held to the reduced catch limits and will be unable to set appropriate commercial possession and/or trip limits, which apportion the catch over the entirety of the calendar year. Disproportionately large harvest occurring within the first weeks of 2017 would disadvantage some gear sectors or owners and operators of smaller vessels that typically fish later in the fishing season. It is reasonable to conclude that the commercial fishing fleet possesses sufficient capacity to exceed the established commercial quota for summer flounder before the regulations would become effective, should these updated specifications not be in place on January 1, 2017. Should this occur, the fishing mortality objectives for summer flounder would be compromised, thus undermining the intent of the rule. Additionally, if states are unable to constrain harvest within these revised specifications at the start of the fishing year, resulting in overages in the total 2017 catch limits, these overages will count against the 2018 fishing year limits, further impacting the fishing fleet. Similarly, the commercial fishing fleet could potentially exceed the revised commercial black sea bass catch limit before these specifications would be effective, if not in place by January 1, 2017. To ensure the effectiveness of this required accountability measure, the black sea bass catch limit revision must also be in place before the start of the fishing year. For all of these reasons, a 30-day delay in effectiveness would be contrary to the public interest. Therefore, NMFS is waiving the requirement to ensure the revised summer flounder specifications are in place on January 1, 2017.

These specifications are exempt from the procedures of Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

A FRFA was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA, a summary of any significant issues raised by the public comments in response to the IRFA and NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

A Summary of Significant Issues Raised by the Public in Response to the Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result

Our responses to all of the comments received on the proposed rule, including those that raised significant issues with the proposed action, can be found in the Comments and Responses section of this rule. None of the comments received raised specific issues regarding the economic analyses summarized in the IRFA. As outlined in Comment 9, commenters were generally concerned with the impacts of a 30-percent reduction on the fishing industry and shoreside businesses. Most comments were focused on the recreational fishery. Our response to those comments are not repeated here. No changes to the proposed rule were required to be made as a result of public comments.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry and $7 million in annual gross receipts for all businesses primarily engaged in for-hire fishing activity (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The North American Industry

Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for summer flounder, as well as owners of vessels that fish for summer flounder in state waters. The Council estimates that the 2017 and 2018 summer flounder specifications could affect 958 small entities and six large entities, assuming average revenues for the 2013–2015 period.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

Specification of commercial quotas and possession limits is constrained by the conservation objectives set forth in the FMP and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act. Economic impacts of changes in year-to-year quota specifications may be offset by adjustments to such measures as commercial fish sizes, changes to mesh sizes, gear restrictions, or possession and trip limits that may increase efficiency or value of the fishery. The Council recommended no such management measure changes, so none are implemented in this final rule. Therefore, the economic impact analysis of the action is evaluated on the different levels of quota specified in the alternatives. The ability of NMFS to minimize economic impacts for this action is constrained by quota levels that provide the maximum availability of fish while still ensuring that the required objectives and directives of the FMP, its implementing regulations, and the Magnuson-Stevens Act are met. In particular, the Council's SSC has made recommendations for the 2017 and 2018 ABC level for the summer flounder stock designed to end overfishing and foster stock growth. NMFS considers these recommendations to be consistent with National Standard 2 of the Magnuson-Stevens Act, which requires that the best available scientific information be used in fishery decision making. This action sets commercial quotas and recreational harvest limits for the summer flounder fishery for the 2017 and 2018 fishing years that achieve the objectives outlined in the preamble of this rule. The landings limits for 2017 include a commercial quota of 5.66 million lb (2,567 mt) and a recreational harvest limit of 3.77 million lb (1,711 mt). For 2018, the measures include an initial commercial quota of 6.63 million lb (3,006 mt) and a recreational harvest limit of 4.42 million lb (2,004 mt).

The only other alternatives considered were the status quo alternatives that are identical to the summer flounder landings limits implemented in December 2015 (*i.e.,* the previously implemented 2017 and 2018 levels). If these specifications remained in place, they would have greater positive socioeconomic impacts than the preferred alternatives. However, these alternatives were not selected as preferred, as they do not address the new scientific information regarding summer flounder stock status, and, therefore, would likely result in overfishing, which would be inconsistent with the FMP, National Standard 1 guidance under the Magnuson-Stevens Act, and the most recent advice of the Council's SSC. Because these alternatives are inconsistent with the purpose and need of this action, they are not considered further under this analysis.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (*i.e.,* permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following Web site: *http://www.greateratlantic.fisheries.noaa.gov.*

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

Dated: December 19, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–30876 Filed 12–21–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 246
Thursday, December 22, 2016

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 839, 841, 842, and 847

RIN 3206–AN22

Federal Employees' Retirement System; Government Costs

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend its regulations to clarify the manner for determining a supplemental liability, the process by which the United States Postal Service (USPS) and the United States Department of the Treasury (Treasury) may request reconsideration of OPM's valuation of the supplemental liability, and to make associated changes. OPM also proposes to amends its regulations to clarify the employee categories it will use to compute the normal cost percentages.

DATES: We must receive your comments by February 21, 2017.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number 3206–AN22 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: combox@opm.gov.* Include RIN number 3206–AN22 in the subject line of the message.
- *Mail:* Roxann Johnson, Retirement Policy, Retirement Services, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–3200.

FOR FURTHER INFORMATION CONTACT: Roxann Johnson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: OPM's determination of the Federal Employees' Retirement System (FERS) normal cost percentage necessary to fund the Civil Service Retirement and Disability Fund (CSRDF) is subject to appeal by agencies with at least 1,000 employees in the general category of employees or 500 employees in any of the special category of employees, and the Secretary of the Treasury or the Postmaster General may request the Board of Actuaries reconsider the amount determined to be payable with respect to any supplemental liability in accordance with 5 U.S.C.8423(c) and 5 CFR 841.409. Sections 841.401 through 841.411 establish the time limits and requirements for an agency appeal of OPM's determination of a normal cost percentage. However, these regulations do not include detailed requirements for the contents of a USPS or a Treasury request for reconsideration of the amount payable with respect to a supplemental liability. Therefore, OPM proposes to include new regulations under 5 CFR part 841 that clarify the process by which the Secretary of the Treasury and the U.S. Postmaster General may file a request for the Board of Actuaries of the Civil Service Retirement System to reconsider an amount determined to be payable to the CSRDF with respect to a supplemental liability.

OPM also proposes to amend its definition of ''actuary'' in 5 CFR 841.402. The current definition is limited to ''an associate or fellow in the Society of Actuaries and one who is enrolled under section 3042 of Public Law 93–406, the Employee Retirement Income Security Act of 1974'' (ERISA). OPM believes this definition no longer reflects professional standards generally required of an actuary for this subpart, and that the current regulatory definition is overly narrow because it works to exclude knowledgeable and experienced actuaries who may not be enrolled under ERISA, but who are well qualified to issue statements of opinion with regard to the CSRDF. As a result, OPM proposes to amend the definition of ''actuary'' under 5 CFR 841.402 to include those who are qualified under actuarial standards of practice in the United States and who have the experience and knowledge to issue a statement of opinion with regard to defined benefit retirement plans.

Additionally, OPM proposes to amend its regulations under 5 CFR 841.403 to make clear that it determines separate normal cost percentages for employees covered under FERS, FERS Revised Annuity Employees (FERS–RAE), and FERS Further Revised Annuity Employees (FERS–FRAE) in compliance with section 5001 of the ''Middle Class Tax Relief and Job Creation Act of 2012,'' Public Law 112–96, 126 Stat. 199 (Feb. 22, 2012), and section 401 of the ''Bipartisan Budget Act of 2013,'' Public Law 113–67, 127 Stat. 1165 (Dec. 26, 2013). This legislation defined FERS–RAE and FERS–FRAE employees for whom increased retirement deductions apply, which results in increased outlays from the CSRDF in refund and lump-sum payments of employee contributions. For that reason, the normal cost percentages for FERS–RAE and FERS–FRAE employees are expected to exceed the normal cost percentages for other FERS employees. The legislation also reduced the benefit accrual rates for Members and Congressional employees (other than Capitol Police) subject to FERS–RAE and FERS–FRAE, resulting in lower associated normal cost percentages. To ensure regulations reflect current statutory language, OPM proposes to amend 5 CFR 841.403 to clearly establish separate normal cost percentages for FERS, FERS–RAE and FERS–FRAE employees within each employee category listed under 5 CFR 841.403.

Also under 5 CFR 841.403, OPM proposes to clarify that it will include members of the Capitol Police as ''Congressional Employees'' for purposes of deriving separate normal cost percentages for this employee group. OPM includes members of the Capitol Police with Congressional employees when deriving the normal cost percentages for this employee group because, in part, 5 U.S.C. 2107(4), defines ''a member or employee of the Capitol Police'' as ''a Congressional employee.'' The Middle Class Tax Relief and Job Creation Act of 2014 eliminated for FERS–RAE and FERS–FRAE employees the higher annuity accrual rates for Congressional employees provided under 5 U.S.C. 8415(c) (*see* 5 U.S.C. 8415(d)), but did not eliminate the higher annuity accrual rates under 5 U.S.C. 8415(e) for members of the Capitol Police subject to FERS–RAE and FERS–FRAE. The annuity benefits of members of the Capitol Police are more closely comparable to another of the special employee groups (law enforcement officers, whose annuities are computed under 5 U.S.C. 8415(e)) for the purpose of determining their FERS normal cost percentage. However, because a member of the Capitol Police is not within the FERS definition of

''law enforcement officer'' at 5 U.S.C. 8401(17), members of the Capitol Police are not included in the special category of ''law enforcement officers'' under 5 U.S.C. 8423(a)(1)(B) and, therefore, are not subject to the normal cost percentage applicable to that group. The only special category listed in 5 U.S.C. 8423(a)(1)(B) that does apply to members of the Capitol Police is ''Congressional employees.'' Thus, despite the fact that the other Congressional employees subject to FERS–RAE and FERS–FRAE do not receive enhanced annuity accrual rates, OPM must include Capitol Police in the Congressional employee normal cost percentage calculation under 5 U.S.C. 8423(a)(1)(B). Therefore, OPM proposes to amend 5 CFR 841.403(b) to reflect all Congressional employees including members of the Capitol Police in determining the FERS, FERS–RAE and FERS–FRAE normal cost percentages for the ''Congressional Employees'' category.

OPM proposes to amend 5 CFR 841.403 to also include U.S. Postal Service employees as a separate category for which OPM will derive normal cost percentages. OPM has determined a government-wide normal cost percentage for each category of employee, and USPS employees have been included in the category of either ''all other employees'' or ''law enforcement officer'' under 5 CFR 841.403(c) and (g). In reviewing a request of the USPS for reconsideration under 5 U.S.C. 8423(c), the Board of Actuaries of the Civil Service Retirement System has recommended OPM to consider that the supplemental liability under 5 U.S.C. 8423(b)(1)(B), and the normal cost percentage for USPS employees who do not fall under the category of ''law enforcement officer'' at 5 CFR 841.403(c), be calculated using USPS-specific assumptions regarding demographic factors, rather than government-wide demographic assumptions. Because of the separate Unites State Postal Service funding provisions established the under 5 U.S.C. 8423(b), OPM is proposing regulations to provide for the use of USPS-specific assumptions regarding demographic factors in the calculation of the USPS supplemental liability and in the determination of the normal cost percentage for Postal Service employees who do not fall under the category of ''law enforcement officer.'' OPM proposes and amends 5 CFR 841.414, which will provide specific guidance on the calculation of the supplemental liability; and OPM proposes to add employees of the USPS, who are not ''law enforcement officers'' under 5 CFR 841.403(c), as a separate category for which OPM will derive normal cost percentages under 5 CFR 841.403.

OPM also proposes to add sections 841.415 through 841.417. These sections would establish the procedures and requirements for a request for reconsideration of a supplemental liability determination filed by the Secretary of the Treasury or the Postmaster General. Under § 841.417, the actuarial analysis submitted with the request must demonstrate a difference in the supplemental liability of at least 2 percent of the present value of future benefits calculated in OPM's computation of the supplemental liability. The Board of Actuaries recommended that the threshold to sustain a request for reconsideration be set as a difference in present value of future benefits. OPM's actuaries tested the effect of what might be considered substantive changes in the demographic assumptions and produced results within a range of 0 percent to a decrease of 5.9 percent. As a result, OPM has decided that a reasonable threshold requirement for the Board of Actuaries to sustain a request for reconsideration of a supplemental liability is 2 percent of the present value of future benefits.

Additionally, OPM proposes to refine its definitions of *present value factor* and *actuarial present value* under 5 CFR parts 831, 839, 842, and 847 to ensure that these definitions are uniform and appropriate. Several provisions of the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) require reduction of annuities on an actuarial basis. For example, OPM applies the present value factors to:

1. Retirees who elect to provide survivor annuity benefits to spouses based on post-retirement marriages;
2. Retiring employees who elect the alternative form of annuity;
3. Employees who owe certain redeposits based on refunds of contributions for service ending before March 1, 1991;
4. Employees who elect to credit certain service with nonappropriated fund instrumentalities; and
5. Retirees with certain types of retirement coverage errors who can elect to receive credit for service by taking an actuarial reduction under the provisions of the Federal Erroneous Retirement Coverage Correction Act (FERCCA).

Specifically, OPM proposes to clarify, under 5 CFRs 831.303, 831.603, 831.2202, 839.102, 842.602, 842.702, and 847.103, that the present value factors are computed by using a composite of sex-distinct factors based upon mortality assumptions for annuitant populations. The factors reflect an increase in benefit payments at an assumed rate of cost-of living adjustment, where appropriate. OPM proposes to remove § 847.602, which currently provides a separate description of present value factors for purposes of Subpart F of part 847 in order to include a definition of ''present value factor'' for all of part 847 and to include a new section (§ 842.616) to describe when the present value factors will be published. Additionally, OPM proposes to clarify under 5 CFRs 842.602 and 842.702 that separate present value factors apply to FERS annuities that receive cost-of-living adjustments before the retiree attains age 62 versus annuities that do not receive cost-of-living adjustments before age 62.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order (E.O.) 12866, as amended by E.O. 13258 and E.O. 13422.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects

5 CFR Part 831

Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 839

Administrative practice and procedure, Claims, Employment taxes, Government employees, Pensions, Reporting and recordkeeping requirements, Retirement, Social security.

5 CFR Part 841

Administrative practice and procedure, Air traffic controllers, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

5 CFR Part 842

Air traffic controllers, Alimony, Firefighters, Law enforcement officers, Pensions, Retirement.

5 CFR Part 847

Administrative practice and procedure, Disability benefits, Government employees, Pensions, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

For the reasons stated in the preamble, the Office of Personnel Management proposes to amend 5 CFR parts 831, 839, 841, 842, and 847 as set forth below:

PART 831—RETIREMENT

■ 1. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under Sec. 7(b) and (e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.204 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under Sec. 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.206 also issued under Sec. 1622(b) of Pub. L. 104–106, 110 Stat. 515; Sec. 831.301 also issued under Sec. 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and Sec. 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337, and Sec. 1(3), E.O. 11228, 3 CFR 1965–1965 Comp. p. 317; Sec. 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under Sec. 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under Sec. 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under Sec. 636 of Appendix C to Pub. L. 106–554, 114 Stat. 2763A–164; Subpart P also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Subpart V also issued under 5 U.S.C. 8343a and Sec. 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

Subpart A—Administration and General Provisions

■ 2. Add § 831.117 to read as follows:

§ 831.117 Computation of the Supplemental Liability

(a) OPM will compute each supplemental liability of the Fund using demographic factors specific to the populations for which the supplemental liability applies.

(b) The supplemental liability will be computed based on the economic assumptions used by the Board of Actuaries of the Civil Service Retirement System for the most recent valuation of the System.

(c) Each supplemental liability shall be rounded to the nearest one hundred million dollars.

■ 3. Amend § 831.303 by revising paragraphs (c)(3) and (d)(3) to read as follows:

§ 831.303 Civilian service.

* * * * *

(c) * * *

(3) For the purpose of paragraph (b)(2) of this section, the term ''present value factor'' has the same meaning as defined in § 831.603 and ''time of retirement'' has the same meaning as defined in § 831.2202.

(d) * * *

(3) For the purpose of paragraph (d)(2) of this section, the term ''present value factor'' has the same meaning as defined in § 831.603 and ''time of retirement'' has the same meaning as defined in § 831.2202.

■ 4. Amend § 831.603 by revising the definition of ''present value factor'' to read as follows:

§ 831.603 Definitions.

* * * * *

Present value factor means the amount of money (earning interest at an assumed rate) required at the time of annuity commencement to fund an annuity that starts at the rate of $1 a month and is payable in monthly installments for the annuitant's lifetime based on mortality rates for annuitants paid from the Civil Service Retirement and Disability Fund; and increases each year at an assumed rate of cost of living adjustment. Assumed rates of interest, mortality, and cost-of-living adjustments used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of the System based on dynamic assumptions. The present value factors are unisex factors obtained as a composite of sex-distinct present value factors.

* * * * *

■ 5. Amend § 831.2202 by revising the definition of ''present value factor'' to read as follows:

§ 831.2202 Definitions.

* * * * *

Present value factor has the same meaning in this subpart as defined in § 831.603.

* * * * *

PART 839—CORRECTION OF RETIREMENT COVERAGE ERRORS UNDER THE FEDERAL ERRONEOUS RETIREMENT COVERAGE CORRECTIONS ACT

■ 6. The authority citation for part 839 continues to read as follows:

Authority: Title II, Pub. L. 106–265, 114 Stat. 770.

Subpart A—General Provisions

■ 7. Amend § 839.102 by revising the definition of ''present value factor'' to read as follows:

§ 839.102 Definitions.

* * * * *

Present value factor has the same meaning in this subpart as defined in § 831.603 of this chapter.

* * * * *

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINSTRATION

■ 8. The authority citation for part 841 continues to read as follows:

Authority: 5 U.S.C. 8461; Sec. 841.108 also issued under 5 U.S.C. 552a; Secs. 841.110 and 841.111 also issued under 5 U.S.C. 8470(a); subpart D also issued under 5 U.S.C. 8423; Sec. 841.504 also issued under 5 U.S.C. 8422; Sec. 841.507 also issued under section 505 of Pub. L. 99–335; subpart J also issued under 5 U.S.C. 8469; Sec. 841.506 also issued under 5 U.S.C. 7701(b)(2); Sec. 841.508 also issued under section 505 of Pub. L. 99–335; Sec. 841.604 also issued under Title II, Pub. L. 106–265, 114 Stat. 780.

Subpart D—Government Costs

■ 9. Amend § 841.401 by revising paragraphs (b)(3) and (4), and adding paragraph (b)(5) to read as follows:

§ 841.401 Purpose and scope.

* * * * *

(b) * * *

(3) Agency appeals of rate determinations;

(4) Methodology for determining the amount due from each agency; and

(5) Requests for reconsideration of the Supplemental Liability.

■ 10. Amend § 841.402 by revising the definition of ''actuary'' to read as follows:

§ 841.402 Definitions.

* * * * *

Actuary means a professional who is qualified under actuarial standards of practice in the United States to issue a

statement of opinion in regard to defined benefit pension plans.

* * * * *

■ 11. Amend § 841.403 by revising the introductory text, and paragraphs (b) and (g), and adding paragraph (h) to read as follows:

§ 841.403 Categories of employees for computation of normal cost percentages.

Separate normal cost percentages for FERS, FERS–RAE and FERS–FRAE will be determined for each of the following groups of employees:

* * * * *

(b) Congressional employees, including members of the Capitol Police;

* * * * *

(g) Other employees of the United States Postal Service;

(h) All other employees.

■ 12. Revise § 841.409 to read as follows:

§ 841.409 Agency right to appeal normal cost percentage.

(a) An agency with at least 1,000 employees in the general category of employees or 500 employees in any of the special categories may appeal to the Board the normal cost percentage for that category as applied to that agency.

(b) No appeal will be considered by the Board unless the agency files, no later than 6 months after the date of publication of the notice of normal cost percentages under § 841.407, a petition for appeal that meets *all* the requirements of § 841.410.

■ 13. Revise the section heading of § 841.410 to read as follows:

§ 841.410 Contents of petition for appeal of normal cost percentage.

* * * * *

■ 14. Revise the section heading of § 841.411 to read as follows:

§ 841.411 Appeals procedure of normal cost percentage.

* * * * *

■ 15. Add § 841.414 to subpart D to read as follows:

§ 841.414 Computation of the supplemental liability.

(a) OPM will compute each supplemental liability of the Civil Service Retirement and Disability Fund using demographic factors consistent with those used for the computation of the normal cost percentages under § 841.403.

(b) The supplemental liability will be computed based on the economic assumptions determined by the Board for the most recent valuation of the Federal Employees Retirement System.

(c) Each supplemental liability will be rounded to the nearest one hundred million dollars.

■ 16. Add § 841.415 to subpart D to read as follows:

§ 841.415 Right to request reconsideration of the supplemental liability.

(a) The Secretary of the Treasury or the Postmaster General may request the Board to reconsider a determination of the amount payable with respect to any supplemental liability.

(b) No request for reconsideration will be considered by the Board unless the Secretary of the Treasury or the Postmaster General files, no later than 6 months after the date of receipt of the first notice of the amount payable with respect to the supplemental liability, a request for reconsideration that meets *all* the requirements of § 841.416.

■ 17. Add § 841.416 to subpart D to read as follows:

§ 841.416 Contents of a request for reconsideration of the supplemental liability.

(a) To request reconsideration of the amount payable with respect to the supplemental liability, the Secretary of the Treasury or the Postmaster General must file with OPM—

(1) A signed letter of appeal summarizing the basis of the request; and

(2) An actuarial report that contains a detailed actuarial analysis of the request.

(b) The actuarial report must—

(1) Be signed by an actuary;

(2) Specifically present any data and development of assumptions related to the request for reconsideration;

(3) Use each of the demographic factors listed in § 841.404; and

(4) Use the economic assumptions under § 841.414(b). When a request is based in whole or in part on a pattern of merit salary increases, the report may include an analysis of the economic assumptions concerning salary and wage growth to take into account the combined effect of merit and general wage and salary growth.

■ 18. Add § 841.417 to subpart D to read as follows:

§ 841.417 Reconsideration of the supplemental liability.

(a) The Board cannot sustain a request for reconsideration unless the Board finds that—

(1) The data used in the actuarial report required by § 841.416 are sufficient and reliable;

(2) The assumptions used in the actuarial report required by § 841.416 are justified; and

(3) The difference in the supplemental liability amount is at least 2 percent of the present value of future benefits calculated in OPM's computation of the supplemental liability.

(b) If the Board sustains a request for reconsideration of the supplemental liability, OPM will recompute the supplemental liability according to the economic and demographic assumptions recommended by the Board.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 19. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251, and Sec. 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under Sec. 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.109 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515; Sec. 842.208 also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.304 and 842.305 also issued under Sec. 321(f) of Pub. L. 107–228, 116 Stat. 1383, Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under Sec. 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under Sec. 4005 of Pub. L. 101–239, 103 Stat. 2106 and Sec. 7001 of Pub. L. 101–508, 104 Stat. 1388; Subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Sec. 636 of Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under Sec. 226(c)(2) of Public Law 108–176, 117 Stat. 2529; Subpart J also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042.

Subpart F—Survivor Elections

■ 20. Amend § 842.602 by revising the definition of ''present value factor'' to read as follows:

§ 842.602 Definitions.

* * * * *

Present value factor means the amount of money (earning interest at an assumed rate) required at the time of annuity commencement to fund an annuity that starts at the rate of $1 a month and is payable in monthly installments for the annuitant's lifetime

based on mortality rates for annuitants paid from the Civil Service Retirement and Disability Fund; and increases each year at an assumed rate of cost-of-living adjustment. Assumed rates of interest, mortality, and cost-of-living adjustments used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of the Federal Employees' Retirement System based on dynamic assumptions. The present value factors are unisex factors obtained as a composite of sex-distinct present value factors. Separate present value factors apply for FERS annuities that receive cost-of-living adjustments before the retiree attains age 62, versus FERS annuities that do not receive cost-of-living adjustments before the retiree attains age 62.

* * * * *

■ 21. Add § 842.616 to subpart F to read as follows:

§ 842.616 Publication of present value factors.

When OPM publishes in the **Federal Register** notice of normal cost percentages under § 841.407 of this chapter, it will also publish updated present value factors.

■ 22. Amend § 842.702 by revising the definition of ''present value factor'' to read as follows:

§ 842.702 Definitions.

* * * * *

Present value factor has the same meaning in this subpart as defined in § 842.602.

* * * * *

PART 847—ELECTIONS OF RETIREMENT COVERAGE BY CURRENT AND FORMER EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES

■ 23. The authority citation for part 847 continues to read as follows:

Authority: 5 U.S.C. 8332(b)(17) and 8411(b)(6) and sections 1131 and 1132 of Pub. L. 107–107, December 28, 2001, 115 Stat 1242; 5 U.S.C. 8347(a) and 8461(g) and section 1043(b) of Pub. L. 104–106, Div. A, Title X, Feb. 10, 1996, 110 Stat. 434. Subpart B also issued under 5 U.S.C. 8347(q) and 8461(n).

Subpart A—General Provisions

■ 24. Amend § 847.103(b) by revising the definition of ''actuarial present value'' and adding the definition of ''present value factor'' in alphabetical order as follows:

§ 847.103 Definitions.

* * * * *

(b) * * *

Actuarial present value means the amount of monthly annuity at time of retirement multiplied by the applicable present value factor.

* * *

Present value factor has the same meaning in this part as defined in § 842.602.

* * * * *

§ 847.602 [Removed and Reserved]

■ 25. Remove and reserve § 847.602.

[FR Doc. 2016–30487 Filed 12–21–16; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0740; Directorate Identifier 2013–NE–24–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2014–05–32, which applies to all Pratt & Whitney (PW) PW2037, PW2037D, PW2037M, PW2040, PW2040D, PW2043, PW2143, PW2643, and F117–PW–100 turbofan engines. AD 2014–05–32 currently requires one-time eddy current inspection (ECI) of affected engines with certain diffuser and HPT cases installed. AD 2014–05–32 also requires a fluorescent-penetrant inspection (FPI) of the diffuser case rear flange and the HPT case front flange. Since we issued AD 2014–05–32, the manufacturer determined through analysis that the inspections required by AD 2014–05–32 are not adequate to maintain safety. This proposed AD would add additional repetitive, on-wing ECI inspections. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by February 6, 2017.

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 NPRM, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, 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–2013–0740; 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: Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, 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–2013–0740; Directorate Identifier 2013–NE–24–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

On March 6, 2014, we issued AD 2014–05–32, Amendment 39–17804 (79 FR 17856, March 31, 2014), (''AD 2014–05–32''), for all PW PW2037, PW2037D, PW2037M, PW2040, PW2040D, PW2043, PW2143, PW2643, and F117–PW–100 turbofan engines. AD 2014–05–32 requires a one-time ECI of affected engines with certain diffuser and HPT cases installed. AD 2014–05–32 also requires an FPI of the diffuser case rear flange and HPT case front flange. AD 2014–05–32 resulted from a rupture of the diffuser-to-HPT case flange. We issued AD 2014–05–32 to prevent failure of the diffuser-to-HPT case flange, which could lead to uncontained engine failure and damage to the airplane.

Actions Since AD 2014–05–32 Was Issued

Since we issued AD 2014–05–32, the manufacturer identified a subpopulation of diffuser cases installed on the affected engines with a repaired flange that has a lower fatigue capability. The repaired flange cannot be distinguished from non-repaired flanges on diffuser cases installed on the affected engines. We determined, therefore, that the inspections required by AD 2014–05–32 are not adequate to maintain safety. To correct this unsafe condition, we are now proposing additional, repetitive ECI inspections.

Related Service Information Under 1 CFR Part 51

We reviewed PW Service Bulletin No. PW2000 72–763, Revision No. 1, dated August 30, 2013; and PW Alert Service Bulletin No. PW2000 A72–765, Revision No. 1, dated July 13, 2016. This service information describes procedures for a one-time ECI inspection of the engine diffuser case and the HPT case, and repetitive on-wing ECIs of the engine diffuser case assembly, respectively. 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.

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 retain the requirements of AD 2014–05–32 except it would eliminate the Prohibition Statement. We determined that this statement is unnecessary for compliance with the AD. In addition, this proposed AD would require repetitive, on-wing ECI inspections. This proposed AD would also remove the PW2240 and PW2337 engines from the applicability section since these engines were removed from PW Type Certificate Number E17NE.

Costs of Compliance

We estimate that this proposed AD will affect 910 engines installed on 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
On-wing/module ECI Inspection.	8 work-hours × $85 per hour = $680.	$0	$680	$230,520 per inspection cycle.
FPI Inspection	3 work-hours × $85 per hour = $255.	20	$275 per inspection cycle	$250,250 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 that the 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 removing Airworthiness Directive (AD) 2014–05–32, Amendment 39–17804 (79 FR 17856, March 31, 2014), and adding the following new AD:

Pratt & Whitney: Docket No. FAA–2013–0740; Directorate Identifier 2013–NE–24–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by February 6, 2017.

(b) Affected ADs

This AD replaces AD 2014–05–32, Amendment 39–17804 (79 FR 17856, March 31, 2014).

(c) Applicability

This AD applies to all Pratt & Whitney (PW) PW2037, PW2037D, PW2037M, PW2040, PW2040D, PW2043, PW2143, PW2643, and F117–PW–100 turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 72, Turbine/Turboprop Engine.

(e) Unsafe Condition

This AD was prompted by a rupture of the diffuser-to-high-pressure turbine (HPT) case flange. We are issuing this AD to prevent failure of the diffuser-to-HPT case flange, which could lead to uncontained engine failure and damage to the airplane.

(f) Compliance

Unless already done, comply with this AD within the compliance times specified.

(1) For diffuser case, part number (P/N) 1B7461, serial numbers (S/Ns) DGGUAK1306 and DGGUAK1308, and HPT case, P/N 1B2440, S/N DKLBCS1032:

(i) Within 100 flight cycles or 30 days after May 5, 2014, whichever is later, eddy current inspect the diffuser case and the HPT case M-flange. Use PW Service Bulletin (SB) No. PW2000 72–763, Revision No. 1, dated August 30, 2013, to do the inspection.

(ii) Reserved.

(2) For all diffuser and HPT cases, at the next piece-part opportunity and every piece-part opportunity thereafter, perform a high sensitivity fluorescent-penetrant inspection (FPI) of the entire diffuser case rear flange (M-flange) and bolt holes, and the entire HPT case forward flange (M-flange) and bolt holes.

(3) For diffuser cases that have not incorporated PW SB PW2000–72–364 or have incorporated either PW SB PW2000–72–700 or PW2000 Series Engine Manual, Repair-28, Task 72–41–01–300–028 (M-flange replacement), perform initial and repetitive eddy current inspections (ECIs) of the M-flange of the diffuser case in accordance with paragraph (f)(4) of this AD.

(4) Use, as applicable, either the Accomplishment Instructions, ''For Engines Installed on the Aircraft,'' paragraphs 3.(I) through 3.(J), or the Accomplishment Instructions, ''For Engines Removed from the Aircraft,'' paragraphs 3.(D) through 3.(E), of PW Alert Service Bulletin (ASB) No. PW2000 A72–765, Revision No. 1, dated July 13, 2016, to do the ECI as follows:

(i) Perform an initial inspection within the following period, whichever occurs later:

(A) Within 5,500 cycles since new or since M-flange replacement, or

(B) Within 2,500 cycles since last piece-part FPI inspection, or

(C) Within 500 cycles from the effective date of this AD.

(ii) If no crack indications are found, re-inspect within 2,500 cycles since last ECI or last piece-part FPI inspection, whichever occurs first.

(iii) If crack indications are found, measure the crack length and determine the re-inspect interval in accordance with:

(A) Paragraphs 5.(C) through 5.(D) of PW ASB No. PW2000 A72–765, Revision No. 1, dated July 13, 2016, ''For Engines Installed on the Aircraft''; or

(B) Paragraphs 4.(C) through 4.(D) of PW ASB No. PW2000 A72–765, Revision No. 1, dated July 13, 2016, ''For Engines Removed from the Aircraft.''

(iv) Remove from service diffuser cases with cracks exceeding 0.170 inches.

(g) Definition

For the purpose of this AD, piece-part opportunity is defined as when the part is completely disassembled.

(h) Credit for Previous Actions

If you performed an ECI of the diffuser case and HPT case M-flange using the Accomplishment Instructions of PW SB No. PW2000 72–763, Revision No. 1, dated August 13, 2013, or an earlier version, or you performed a high sensitivity FPI of the diffuser case and HPT case at the piece-part opportunity after January 1, 2010, you met the requirements of paragraph (f)(1) of this AD.

(i) 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.*

(j) Related Information

(1) For more information about this proposed AD, contact Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov.*

(2) PW SB No. PW2000 72–763, Revision No. 1, dated August 30, 2013; and PW ASB No. PW2000 A72–765, Revision No. 1, dated July 13, 2016, can be obtained from PW using the contact information in paragraph (j)(3) of this AD.

(3) For service information identified in this proposed AD, contact Pratt & Whitney, United Technologies Corporation, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503.

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on December 1, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–30114 Filed 12–21–16; 8:45 am]

BILLING CODE 4910–13–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Parts 2004 and 2005

[Docket Number USTR–2016–0027]

RIN 0350–AA09

Privacy Act Policies and Procedures

AGENCY: Office of the United States Trade Representative.

ACTION: Proposed rule.

SUMMARY: As part of a comprehensive review of agency practices related to the disclosure of records and information, the Office of the United States Trade Representative (USTR) is updating both its systems of records and implementing rule under the Privacy Act of 1974 (Privacy Act). This proposed rule describes how individuals can find out if a USTR system of records contains information about them and, if so, how to access or amend a record. The proposed rule would move the Privacy Act regulation from part 2005 into a new subpart C to part 2004. USTR previously renamed and reorganized part 2004 to include all of the rules governing disclosure of USTR records and information. Elsewhere in this issue of the **Federal Register**, USTR is publishing a notice concerning updates to its Privacy Act systems of records.

DATES: We must receive your written comments on or before January 23, 2017.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* The docket number for this rulemaking is USTR–2016–0027. USTR invites comments on all aspects of the proposed rule, and will revise the language as appropriate after taking all timely comments into consideration. Copies of all comments will be available for public viewing at *www.regulations.gov* upon completion of processing. You can view a submission by entering the docket number USTR–2016–0027 in the search field at *http://www.regulations.gov.* We will post comments without change and will include any personal information you provide, such as your name, mailing address, email address, and telephone number.

FOR FURTHER INFORMATION CONTACT: Janice Kaye, Monique Ricker or Melissa Keppel, Office of General Counsel, Office of the US Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington DC 20509, *jkaye@ustr.eop.gov; mricker@ustr.eop.gov; mkeppel@ustr.eop.gov;* 202–395–3150.

SUPPLEMENTARY INFORMATION:

I. Background

USTR has undertaken a comprehensive review of agency practices related to the collection, use, protection and disclosure of USTR records and information. As a result of that review, USTR is updating both its Privacy Act systems of records and implementing rule. The Privacy Act, 5 U.S.C. 552a, balances the Federal Government's need to maintain information about individuals while protecting individuals against unwarranted invasions of privacy stemming from Federal agencies' collection, maintenance, use, security and disclosure of personal information about them that is contained in systems of records. The Privacy Act requires each Federal agency to publish regulations describing its Privacy Act procedures and any system of records it exempts from provisions of the Privacy Act, including the reasons for the exemption.

USTR's current Privacy Act rule, codified at 15 CFR part 2005, was last revised in 1975. *See* 40 FR 48331, Oct. 14, 1975. Due to the passage of time, we are completely rewriting and updating the rule. We are reserving part 2005, the rule's current codification, and moving the revised rule into a new subpart C to part 2004. Part 2004 includes four subparts containing all of the rules governing disclosure of USTR records and information.

Elsewhere in this issue of the **Federal Register**, USTR is publishing a notice updating the agency's Privacy Act systems of records.

II. Section-by-Section Analysis

Section 2004.20—Definitions: This section sets forth definitions of select terms used in this subpart.

Section 2004.21—Purpose and scope: This section describes the purpose of the regulation, which is to implement the Privacy Act, and explains general policies and procedures for individuals requesting access to records, requesting amendments or corrections to records, and requesting an accounting of disclosures of records.

Section 2004.22—How to make a Privacy Act request: This section explains what an individual must do to submit a valid request to USTR for access to records, to amend or correct records, or for an accounting of disclosures of records. It also describes the information an individual must provide so USTR can identify the records sought and determine whether the request can be granted.

Section 2004.23—How USTR will respond to a Privacy Act request: This section describes the period of time within which USTR will respond to requests. It also explains that USTR will grant or deny requests in writing, provide reasons if a request is denied in whole or in part, and explain the right of appeal.

Section 2004.24—What requesters can do if they are dissatisfied with USTR's response to a Privacy Act request: This section describes when and how an individual may appeal a determination on a Privacy Act request and how and within what period of time USTR will make a determination on an appeal.

Section 2004.25—Fees: This section explains that requesters are required to pay fees for the duplication of requested records.

Section 2004.26—Exemptions: This section explains that certain exemptions from the Privacy Act exist, explains how those exemptions are made effective, what the effect of an exemption is, and how to determine whether an exemption applies.

Section 2004.27—How records are secured: This section explains how we generally protect records under the Privacy Act.

Section 2004.28—Use and collection of Social Security numbers: This section explains that USTR collects Social Security numbers only when authorized to do so and describes the conditions under which USTR may collect and use Social Security numbers.

Section 2004.29—USTR employee responsibilities under the Privacy Act: This section lists the responsibilities of USTR employees under the Privacy Act.

III. Regulatory Flexibility Act

USTR has considered the impact of the proposed regulation and determined that if adopted as a final rule it is not likely to have a significant economic impact on a substantial number of small business entities because it is applicable only to USTR's internal operations and legal obligations. *See* 5 U.S.C. 601 *et seq.*

IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects

15 CFR Part 2004

Administrative practice and procedure, Courts, Disclosure, Exemptions, Freedom of information, Government employees, Privacy, Records, Subpoenas, Testimony.

15 CFR Part 2005

Privacy.

For the reasons stated in the preamble, the Office of the United States Trade Representative is proposing to amend chapter XX of title 15 of the Code of Federal Regulations as follows:

PART 2004—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. Add subpart C, consisting of §§ 2004.20 through 2004.29 to read as follows:

Subpart C—Privacy Act Policies and Procedures

Sec.
2004.20 Definitions.
2004.21 Purpose and scope.
2004.22 How do I make a Privacy Act request?
2004.23 How will USTR respond to my Privacy Act request?
2004.24 What can I do if I am dissatisfied with USTR's response to my Privacy Act request?
2004.25 What does it cost to get records under the Privacy Act?
2004.26 Are there any exemptions from the Privacy Act?
2004.27 How are records secured?
2004.28 Use and collection of Social Security numbers.
2004.29 USTR employee responsibilities under the Privacy Act.

Authority: 5 U.S.C. 552a; 19 U.S.C. 2171(e)(3).

Subpart C—Privacy Act Policies and Procedures

§ 2004.20 Definitions.

For purposes of this subpart:

Access means making a record available to a subject individual.

Amendment means any correction, addition to or deletion of information in a record.

Individual means a natural person who either is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

Maintain means to keep or hold and preserve in an existing state, and includes the terms collect, use, disseminate and control.

Privacy Act Office means the USTR officials who are authorized to respond to requests and to process requests for amendment of records USTR maintains under the Privacy Act.

Record means any item, collection or grouping of information about an individual that USTR maintains within a system of records and contains the individual's name or the identifying

number, symbol or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

System of records means a group of records USTR maintains or controls from which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular assigned to the individual. USTR publishes notices in the **Federal Register** announcing the creation, deletion or amendment of its systems of records. You can find a description of our systems of records on the USTR Web site: *www.ustr.gov.*

§ 2004.21 Purpose and scope.

(a) This subpart implements the Privacy Act, 5 U.S.C. 552a, a Federal law that requires Federal agencies to protect private information about individuals that the agencies collect or maintain. It establishes USTR's rules for access to records in systems of records we maintain that are retrieved by an individual's name or another personal identifier. It describes the procedures by which individuals may request access to records, request amendment or correction of those records, and request an accounting of disclosures of those records by USTR. Whenever it is appropriate to do so, USTR automatically processes a Privacy Act request for access to records under both the Privacy Act and the FOIA, following the rules contained in this subpart and subpart B of part 2004. USTR processes a request under both the Privacy Act and the FOIA so you will receive the maximum amount of information available to you by law.

(b) This subpart does not entitle you to any service or to the disclosure of any record to which you are not entitled under the Privacy Act. It also does not, and may not be relied upon to create any substantive or procedural right or benefit enforceable against USTR.

§ 2004.22 How do I make a Privacy Act request?

(a) *In general.* You can make a Privacy Act request on your own behalf for records or information about you. You also can make a request on behalf of another individual as the parent or guardian of a minor, or as the guardian of someone determined by a court to be incompetent. You may request access to another individual's record or information if you have that individual's written consent, unless other conditions of disclosure apply.

(b) *How do I make a request?* - (1) *Where do I send my written request?* To make a request for access to a record, you should write directly to our Privacy Act Office. Heightened security delays mail delivery. To avoid mail delivery delays, we strongly suggest that you email your request to *PRIVACY@ustr.eop.gov.* Our mailing address is: Privacy Act Office, Office of the US Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington DC 20509. To make sure that the Privacy Act Office receives your request without delay, you should include the notation 'Privacy Act Request' in the subject line of your email or on the front of your envelope and also at the beginning of your request.

(2) *Security concerns.* To protect our computer systems, we will not open attachments to emailed requests—you must include your request within the body of the email. We will not process email attachments.

(c) *What should my request include?* You must describe the record that you seek in enough detail to enable the Privacy Act Office to locate the system of records containing the record with a reasonable amount of effort. Include specific information about each record sought, such as the time period in which you believe it was compiled, the name or identifying number of each system of records in which you believe it is kept, and the date, title or name, author, recipient, or subject matter of the record. As a general rule, the more specific you are about the record that you seek, the more likely we will be able to locate it in response to your request.

(d) *How do I request amendment or correction of a record?* If you are requesting an amendment or correction of a USTR record, you must identify each particular record in question and the system of records in which the record is located, describe the amendment or correction that you seek, and state why you believe that the record is not accurate, relevant, timely or complete. You may submit any documentation that you think would be helpful, including an annotated copy of the record.

(e) *How do I request an accounting of record disclosures?* If you are requesting an accounting of disclosures made by USTR to another person, organization or Federal agency, you must identify each particular record in question. An accounting generally includes the date, nature and purpose of each disclosure, as well as the name and address of the person, organization, or Federal agency to which the disclosure was made.

(f) *Verification of identity.* When making a Privacy Act request, you must verify your identity in accordance with these procedures to protect your privacy or the privacy of the individual on whose behalf you are acting. If you make a Privacy Act request and you do not follow these identity verification procedures, USTR cannot process your request.

(1) *How do I verify my own identity?* You must state your full name, current address, and date and place of birth. In order to help identify and locate the records, you also may, at your option, include your Social Security number. To verify your own identity, you must provide an unsworn declaration under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury. To fulfill this requirement, you must include the following statement just before the signature on your request:

I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].

(2) *How do I verify parentage or guardianship?* If you make a request as the parent or guardian of a minor, or as the guardian of someone determined by a court to be incompetent, for access records or information about that individual, you must establish:

(i) The identity of the individual who is the subject of the record, by stating the individual's name, current address and date and place of birth, and, at your option, the Social Security number of the individual;

(ii) Your own identity, as required in paragraph (f)(1) of this section;

(iii) That you are the parent or guardian of the individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or a court order establishing your guardianship; and

(iv) That you are acting on behalf of the individual in making the request.

§ 2004.23 How will USTR respond to my Privacy Act request?

(a) *When will we respond to your request?* We will search to determine if the requested records exist in a system of records USTR owns or controls. The Privacy Act Office will respond to you in writing within twenty days after we receive your request, if it meets the requirements of this subpart. We may extend the response time in unusual circumstances, such as the need to consult with another agency about a record or to retrieve a record shipped offsite for storage.

(b) *What will our response include?* Our written response will include our determination whether to grant or deny your request in whole or in part, a brief explanation of the reasons for the determination, and the amount of the fee charged, if any, under § 2004.25. If

you requested access to records, we will make the records, if any, available to you. If you requested amendment or correction of a record, the response will describe any amendments or corrections made and advise you of your right to obtain a copy of the amended or corrected record.

(c) *Adverse determinations*—(1) *What is an adverse determination?* An adverse determination is a response to a Privacy Act request that:

(i) Withholds any requested record in whole or in part;

(ii) Denies a request to amend or correct a record in whole or in part;

(iii) Declines to provide an accounting of disclosures;

(iv) Advises that a requested record does not exist or cannot be located;

(v) Finds that what you requested is not a record subject to the Privacy Act; or

(vi) Advises on any disputed fee matter.

(2) *Responses that include an adverse determination.* If the Privacy Act Office makes an adverse determination with respect to your request, our written response will identify the person responsible for the adverse determination, that the adverse determination is not a final agency action, and that you may appeal the adverse determination under § 2004.24.

§ 2004.24 What can I do if I am dissatisfied with USTR's response to my Privacy Act request?

(a) *What can I appeal?* You can appeal any adverse determination in writing to our Privacy Act Appeals Committee within thirty calendar days after the date of our response. We provide a list of adverse determinations in § 2004.23(c).

(b) *How do I make an appeal?*—(1) *What should I include?* You may appeal by submitting a written statement giving the reasons why you believe the Committee should overturn the adverse determination. Your written appeal may include as much or as little related information as you wish to provide, as long as it clearly identifies the determination (including the request number, if known) that you are appealing.

(2) *Where do I send my appeal?* You should mark both your letter and the envelope, or the subject of your email, ''Privacy Act Appeal''. To avoid mail delivery delays caused by heightened security, we strongly suggest that you email any appeal to *PRIVACY@ustr.eop.gov.* Our mailing address is: Privacy Office, Office of the US Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington DC 20509.

(c) *Who will decide your appeal?* (1) The Privacy Act Appeals Committee or designee will act on all appeals under this section.

(2) We ordinarily will not adjudicate an appeal if the request becomes a matter of litigation.

(3) On receipt of any appeal involving classified information, the Privacy Act Appeals Committee must take appropriate action to ensure compliance with applicable classification rules.

(d) *When will we respond to your appeal?* The Privacy Act Appeals Committee will notify you of its appeal decision in writing within thirty days from the date it receives an appeal that meets the requirements of paragraph (b) of this section. We may extend the response time in unusual circumstances, such as the need to consult with another agency about a record or to retrieve a record shipped offsite for storage.

(e) *What will our response include?* The written response will include the Committee's determination whether to grant or deny your appeal in whole or in part, a brief explanation of the reasons for the determination, and information about the Privacy Act provisions for court review of the determination.

(1) *Appeals concerning access to records.* If your appeal concerns a request for access to records and the appeal is granted in whole or in part, we will make the records, if any, available to you.

(2) *Appeals concerning amendments or corrections.* If your appeal concerns amendment or correction of a record, the response will describe any amendment or correction made and advise you of your right to obtain a copy of the amended or corrected record. We will notify all persons, organizations or Federal agencies to which we previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. Whenever the record is subsequently disclosed, the record will be disclosed as amended or corrected. If our response denies your request for an amendment or correction to a record, we will advise you of your right to file a statement of disagreement under paragraph (f) of this section.

(f) *Statements of disagreement*—(1) *What is a statement of disagreement?* A statement of disagreement is a concise written statement in which you clearly identify each part of any record that you dispute and explain your reason(s) for disagreeing with our denial in whole or in part of your appeal requesting amendment or correction.

(2) *How do I file a statement of disagreement?* We must receive your statement of disagreement within thirty calendar days of our denial in whole or in part of your appeal concerning amendment or correction of a record.

(3) *What will we do with your statement of disagreement?* We will place your statement of disagreement in the system(s) of records in which the disputed record is maintained. We also may append a concise statement of our reason(s) for denying the request to amend or correct the record. Whenever the record is subsequently disclosed, the record will be disclosed along with your statement of disagreement and our explanation, if any.

(g) *When appeal is required.* Before seeking review by a court of an adverse determination or denial of a request, you generally first must submit a timely administrative appeal under this section.

§ 2004.25 What does it cost to get records under the Privacy Act?

(a) *Your request is an agreement to pay fees.* We consider your Privacy Act request as your agreement to pay all applicable fees unless you specify a limit on the amount of fees you agree to pay. We will not exceed the specified limit without your written agreement.

(b) *How do we calculate fees?* We will charge a fee for duplication of a record under the Privacy Act in the same way we charge for duplication of records under the FOIA in § 2004.9. There are no fees to search for or review records requested under the Privacy Act.

§ 2004.26 Are there any exemptions from the Privacy Act?

(a) *What is a Privacy Act exemption?* The Privacy Act authorizes USTR to exempt records or information in a system of records from some of the Privacy Act requirements, if we determine that the exemption is necessary. With the exception of certain law enforcement records, we will not provide you with an accounting of disclosures or make available to you records that are exempt.

(b) *How do I know if the records or information I want are exempt?* Each USTR system of records notice will advise you if we have determined that records or information in records are exempt from Privacy Act requirements. If we have claimed an exemption for a system of records, the system of records notice will identify the exemption and the provisions of the Privacy Act from which the system is exempt.

§ 2004.27 How are records secured?

(a) *Controls.* USTR must establish administrative and physical controls to

prevent unauthorized access to its systems of records, unauthorized or inadvertent disclosure of records, and physical damage to or destruction of records. The stringency of these controls corresponds to the sensitivity of the records that the controls protect. At a minimum, the administrative and physical controls must ensure that:

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

(b) *Limited access.* Access to records is restricted only to individuals who require access in order to perform their official duties.

§ 2004.28 Use and collection of Social Security numbers.

We will collect Social Security numbers only when it is necessary and we are authorized to do so. At least annually, the Privacy Act Office will inform employees who are authorized to collect information that:

(a) Individuals may not be denied any right, benefit or privilege as a result of refusing to provide their Social Security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) They must inform individuals who are asked to provide their Social Security numbers:

(1) If providing a Social Security number is mandatory or voluntary;

(2) If any statutory or regulatory authority authorizes collection of a Social Security number; and

(3) The uses that will be made of the Social Security number.

§ 2004.29 Employee responsibilities under the Privacy Act.

At least annually, the Privacy Act Office will inform employees about the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, a USTR employee must:

(a) Collect from individuals only information that is relevant and necessary to discharge USTR's responsibilities.

(b) Collect information about an individual directly from that individual whenever practicable.

(c) Inform each individual from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which USTR intends to use the information;

(3) The routine uses, *i.e.,* disclosures of records and information contained in a system of records without the consent of the subject of the record, USTR may make; and

(4) The effects on the individual, if any, of not providing the information.

(d) Ensure that the employee's office does not maintain a system of records without public notice and notify appropriate officials of the existence or development of any system of records that is not the subject of a current or planned public notice.

(e) Maintain all records that are used in making any determination about an individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to ensure fairness to the individual in the determination.

(f) Except for disclosures made to an agency or under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely and complete.

(g) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by USTR to persons, organizations or agencies.

(h) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone.

(i) Notify the appropriate official of any record that contains information that the Privacy Act does not permit USTR to maintain.

PART 2005—[REMOVED]

■ 3. Remove part 2005.

Janice Kaye,

Chief Counsel for Administrative Law, Office of the U.S. Trade Representative.

[FR Doc. 2016–30495 Filed 12–21–16; 8:45 am]

BILLING CODE 3290–F7–P

FEDERAL TRADE COMMISSION

16 CFR Part 4

Freedom of Information Act; Miscellaneous Rules

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed rule.

SUMMARY: The Federal Trade Commission proposes to implement provisions of the FOIA Improvement Act of 2016 by amending the regulation governing fees the agency may assess to offset the cost of disseminating information and records to the public. The FTC also proposes other clarifying changes and updates to the fee regulation.

DATES: Comments must be submitted on or before January 23, 2017.

ADDRESSES: Interested parties may file written comments electronically or in paper form by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Fee Schedule Rulemaking, 16 CFR 4.8, Project No. 122102'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/feeschedule,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex T), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex T), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Attorney, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–3355.

SUPPLEMENTARY INFORMATION: On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016 (the ''2016 FOIA Amendments''), Public Law 114–185, amending the Freedom of Information Act (FOIA), 5 U.S.C. 552. The new law addresses a range of procedural issues and places additional limitations on assessing search fees (or, for requesters with preferred fee status, duplication fees) if an agency's response time to a requester is delayed. The new law also requires the head of each agency to review and update their agency's regulations as necessary within 180 days of enactment.

The Commission proposes to change its fee schedule to implement the 2016 FOIA Amendments as appropriate. The Commission also proposes other fee-related changes that will serve to provide additional notice to the public or update the Commission's fee schedule. The additional guidance will be available at the FOIA page on the FTC Web site, *https://www.ftc.gov/about-ftc/foia.*

As required by the FOIA, the Commission seeks public comment on the proposed revisions to its fee regulations set forth in this document. *See* 5 U.S.C. 552(a)(4)(A)(i). In a separate document published in today's **Federal Register**, the Commission has published final regulations making other related administrative rule changes that incorporate the 2016 FOIA Amendments which do not require public comment.

Proposed Changes to Fee Regulation

In Rule 4.8(b)(2)(iii), the Commission proposes to clarify that, for any given FOIA request, a requester qualifies as a representative of the news media only if it does not intend to make commercial use of the material it seeks. The proposed language more closely comports with the FOIA by clarifying that an entity will not qualify for the fee category status afforded to a representative of the news media where it makes the request in a corporate, rather than journalistic, capacity. *See* 5 U.S.C. 552(a)(4)(A)(ii)(II) (fee reduction applies only if ''records are not sought for commercial use''). However, the proposed clarification also makes clear that, in the context of a news media request, ''commercial use'' does not include a request for records supporting the requester's underlying news dissemination function.

Rule 4.8(b)(6) contains the Commission's uniform schedule of fees that applies to records held by all constituent units of the Commission and to all requests made for materials on the public record and those made under the FOIA and the Privacy Act of 1974, 5 U.S.C. 552a. In Rule 4.8(b)(6)(i), the Commission proposes to eliminate a duplicative and outdated line item charge found under *Electronic Services* that is already covered under the *Duplication* category. Specifically, *Electronic Services: Preparing electronic records and media* is already covered and subsumed under *Duplication: Other reproduction (e.g., computer disk or printout, microfilm, microfiche, or microform).* We are also clarifying that the existing line item for *Duplication: Other reproduction* covers operator time for conversions from one electronic format to a different electronic format as requested by the FOIA requester.

Rule 4.8(b)(7) contains the Commission's provisions relating to limitations on FOIA fees if an agency's response time to a requester is delayed (*e.g.,* untimely responses). The 2016 FOIA Amendments mandated additional limitations on assessing search fees (or, for requesters with preferred fee status, duplication fees) for delayed responses. The Commission proposes modifying Rule 4.8(b)(7) to closely track the revised FOIA statutory language as appropriate.

In Rule 4.8(e)(2)(i)(C), the Commission proposes to add language that tracks the FOIA statutory standards for public interest fee waivers. 5 U.S.C. 552(a)(4)(iii). Specifically, the Commission proposes to replace ''the understanding of the public at large'' with ''public understanding.''

In Rule 4.8(i), the Commission proposes to add an additional option for FOIA requesters to pay electronically through the Department of Treasury's *pay.gov* Web site. Requesters would still have the option of paying through check or money order to the Treasury of the United States.

Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, it must be received on or before January 23, 2017. Write ''FOIA Fee Rulemaking, 16 CFR 4.8, Project No. P122102'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *https://www.ftc.gov/policy/public-comments.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f). *See also* FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/feeschedule,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''FOIA Fee Rulemaking, 16 CFR 4.8, Project No. P122102'' on your comment, and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex T), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex T), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *https://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 23, 2017. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

The Commission believes that the proposed Rule amendments do not require an initial regulatory analysis under the Regulatory Flexibility Act because the amendments will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). Most requests for access to FTC records are filed by individuals, who are not ''small entities'' within the

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* 16 CFR 4.9(c).

meaning of that Act, 5 U.S.C. 601(6), and, in any event, the economic impact of the rule changes on all requesters is expected to be minimal, if any. Likewise, the proposed amendments do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–520. The Commission nonetheless solicits comments on any economic and regulatory impact of the proposed rule; paperwork requirements, if any, that commenters believe the amendments impose upon private persons; and possible regulatory alternatives to reduce the amendments' economic impact, if any, while fully implementing the statutory mandate. The Commission will consider any such comments before promulgating the amendments in final form.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

For the reasons set forth in the preamble, the Federal Trade Commission proposes to amend Title 16, Chapter I, Subchapter A, Part 4 of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

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

Authority: 15 U.S.C. 46.

■ 2. Amend § 4.8 by revising paragraphs (b)(2)(iii), (b)(6)(i), (b)(7), (e)(2)(i)(C) and (i) to read as follows:

§ 4.8. Costs for obtaining Commission records.

* * * * *

(b) * * *

(2) * * *

(iii) A *representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase by or subscription by the general public or free distribution to the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (*e.g.,* electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would provide a solid basis for such an expectation, but the past publication record of a requester may also be considered in making such a determination. To qualify for news media status, a request must not be for a nonjournalistic commercial use. A request for records supporting the news dissemination function of the requester is not considered a commercial use.

* * * * *

(6)(i) *Schedule of direct costs.* The following uniform schedule of fees applies to records held by all constituent units of the Commission:

Duplication:	
Paper to paper copy (up to 8.5'' x 14'')	$0.14 per page.
Converting paper into electronic format (scanning)	Quarter hour rate of operator (Clerical, Other Professional, Attorney/Economist).
Other reproduction (*e.g.,* converting from one electronic format to computer disk or printout, microfilm, microfiche, or microform).	Actual direct cost, including operator time.
Electronic Services:	
Compact disc (CD)	3.00 per disc.
DVD	3.00 per disc.
Videotape cassette	2.00 per cassette.
Microfilm Services:	
Conversion of existing fiche/film to paper	0.14 per page.
Other Fees:	
Certification	25.00 each.
Express Mail	U.S. Postal Service Market Rates.
Records maintained at Iron Mountain or Washington National Records Center facilities (records retrieval, refiling, *et cetera*).	Contract Rates.
Other Services as they arise	Market Rates.

* * * * *

(7) *Untimely responses.* (i) Except as provided in paragraphs (b)(7)(ii)–(iv) of this section, search fees for responding to a Freedom of Information Act request will not be assessed for responses that fail to comply with the time limits, as provided at 5 U.S.C. 552(a)(4)(A)(viii), § 4.11(a)(1)(ii) and § 4.11(a)(3)(ii), if there are no unusual or exceptional circumstances, as those terms are defined by 5 U.S.C. 552(a)(6) and § 4.11(a)(1)(ii). Except as provided in paragraphs (b)(7)(ii)–(iv) of this section, duplication fees will not be assessed for an untimely response, where there are no unusual or exceptional circumstances, made to a requester qualifying for one of the fee categories set forth in § 4.8(b)(2).

(ii) If the Commission has determined that unusual circumstances apply and has provided a timely written notice to the requester in accordance with 5 U.S.C. 552(a)(6)(B), the delay in a response is excused for an additional 10 days. If the Commission fails to comply with the extended time limit, it will not charge search fees (or, for a requester qualifying for one of the fee categories set forth in § 4.8(b)(2), will not charge duplication fees).

(iii) If the Commission has determined that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, the agency may charge search fees (or, for requesters qualifying for one of the fee categories set forth in § 4.8(b)(2), may charge duplication fees) if timely written notice has been provided to the requester and the agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(iv) If a court determines that exceptional circumstances exist, the Commission's failure to comply with a time limit shall be excused for the

length of time provided by the court order.

* * * * *

(e) Public interest fee waivers

(2) * * *

(i) * * *

(C) The understanding to which disclosure is likely to contribute is public understanding, as opposed to the understanding of the individual requester or a narrow segment of interested persons (*e.g.,* by providing specific information about the requester's expertise in the subject area of the request and about the ability and intention to disseminate the information to the public); and

* * * * *

(i) *Means of payment.* Payment shall be made either electronically through the Department of Treasury's *pay.gov* Web site or by check or money order payable to the Treasury of the United States.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–30508 Filed 12–21–16; 8:45 am]

BILLING CODE 6750–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 706

[No. FOIA–2016]

RIN 3420–AA02

Freedom of Information

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes revisions to the Overseas Private Investment Corporation's (''OPIC'') Freedom of Information Act (FOIA) regulations by making substantive and administrative changes. These revisions are intended to supersede OPIC's current FOIA regulations, located at this Part. The proposed rule incorporates the FOIA revisions contained in the FOIA Improvement Act of 2016, makes administrative changes to reflect OPIC's costs, and conforms more closely to the language recommended by the Department of Justice, Office of Information Policy.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before January 23, 2017.

ADDRESSES: You may submit comments, identified by Docket Number FOIA–2016, by one of the following methods:

- *Email: foia@opic.gov.* Include docket number FOIA–2016 in the subject line of the message.
- *Mail:* Nichole Skoyles, Administrative Counsel, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527. Include docket number FOIA–2016 on both the envelope and the letter.

FOR FURTHER INFORMATION CONTACT: Nichole Skoyles, Administrative Counsel, (202) 336–8400, or *foia@opic.gov.*

SUPPLEMENTARY INFORMATION: The revision of Part 706 incorporates changes to the language and structure of the regulations and adds new provisions to implement the FOIA Improvement Act of 2016. OPIC is already complying with these changes and this proposed revision serves as OPIC's formal codification of the applicable law and its practice.

OPIC has also updated its regulations to incorporate much of the suggested language provided by the Department of Justice, Office of Information Policy. Adopting this language allows OPIC to adopt many of the recommended best practices in FOIA administration. This update also assists requesters as much of OPIC's regulations are now similar to those of other agencies.

In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* the head of OPIC has certified that this proposed rule, as promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed rule implements the FOIA, a statute concerning the release of federal records, and does not economically impact Federal Government relations with the private sector. Further, under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processes for requesters. Based on OPIC's experience, these fees are nominal.

Executive Order 12866

OPIC is exempted from the requirements of this Executive Order per the Office of Management and Budget's October 12, 1993 memorandum. Accordingly, OMB did not review this proposed rule. However this rule was generally composed with the principles stated in section 1(b) of the Executive Order in mind.

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 202–05)

This proposed rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*)

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United State based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 22 CFR Part 706

Administrative practice and procedure, Freedom of Information, Privacy.

For the reasons stated in the preamble the Overseas Private Investment Corporation proposes to revise 22 CFR part 706 as follows:

PART 706—INFORMATION DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT

Sec.

Subpart A—General

706.1 Description.
706.2 Policy.
706.3 Scope.
706.4 Preservation and transfer of records.
706.5 Other rights and services.

Subpart B—Obtaining OPIC Records

706.10 Publically available records.
706.11 Requesting non-public records.

Subpart C—Fees for Requests for Non-Public Records

706.20 In general.
706.21 Types of fees.
706.22 Requester categories.
706.23 Fees charged.

706.24 Requirements for waiver or reduction of fees.

Subpart D—Processing of Requests for Non-Public Records

706.30 Responsibility for responding to requests.
706.31 Timing of responses to requests.
706.32 Responses to requests.
706.33 Confidential commercial information.
706.34 Administrative appeals.

Authority: 5 U.S.C. 552, Public Law 114–185

Subpart A—General

§ 706.1 Description.

This part contains the rules that the Overseas Private Investment Corporation (''OPIC'') follows in processing requests for records under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552 as amended. These rules should be read together with the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (Mar. 27, 1987) (''OMB Guidelines''). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with OPIC's Privacy Act regulations at 22 CFR 707 as well as under this subpart.

§ 706.2 Policy.

It is OPIC's policy to make its records available to the public to the greatest extent possible, in keeping with the spirit of the FOIA. This policy includes providing reasonably segregable information from records that also contain information that may be withheld under the FOIA. However, implementation of this policy also reflects OPIC's view that the soundness and viability of many of its programs depend in large measure upon full and reliable commercial, financial, technical and business information received from applicants for OPIC assistance and that the willingness of those applicants to provide such information depends on OPIC's ability to hold it in confidence. Consequently, except as provided by law and in this part, information provided to OPIC in confidence will not be disclosed without the submitter's consent.

§ 706.3 Scope.

This part applies to all agency records in OPIC's possession and control. This part does not compel OPIC to create records or to ask outside parties to provide documents in order to satisfy a FOIA request. OPIC may, however, in its discretion and in consultation with a FOIA requester, create a new record as a partial or complete response to a FOIA request. In responding to requests for information, OPIC will ordinarily consider only those records within its possession and control as of the date of OPIC's search. If any other date is used, OPIC will inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), is not considered responsive to a request.

§ 706.4 Preservation and transfer of records.

(a) *Preservation of records.* OPIC preserves all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 14 of the National Archives and Records Administration. Records that are identified as responsive to a request will not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(b) *Transfer of records to the National Archives.* Under the Records Disposal Act, 44 U.S.C. Chapter 33, OPIC is required to transfer legal custody and control of records with permanent historical value to the National Archives. OPIC's Finance Project and Insurance Contract Case files generally do not qualify as records with permanent historical value. OPIC will not transfer these files except when the National Archives determines that an individual project or case is especially significant or unique. If the National Archives receives a FOIA request for records that have been transferred it will respond to the request in accordance with its own FOIA regulations.

§ 706.5 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart B—Obtaining OPIC Records

§ 706.10 Publically available records.

Records that the FOIA requires agencies to make available for public inspection in an electronic format may be accessed through OPIC's FOIA Web site at *www.opic.gov/foia.* Records identified as of interest to the public and appropriate for public disclosure are also available, along with an index. These include annual reports and financial statements, program handbooks, press releases, application forms, claims information, and annual FOIA reports. OPIC will review and update its Web site of posted records on an ongoing basis. Persons seeking information are encouraged to visit OPIC's Web site to see what information is already available before submitting a request; OPIC's FOIA Office and FOIA Public Liaison are available to assist individuals in locating records.

§ 706.11 Requesting non-public records.

(a) *General information.* (1) *How to submit.* To make a request for records a requester must submit a written request to OPIC's FOIA Office either by mail to Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527 or electronic mail to *FOIA@opic.gov.* The envelope or subject line should read ''Freedom of Information Request'' to ensure proper routing. The request is considered received by OPIC upon actual receipt by OPIC's FOIA Office.

(2) *Records about oneself.* A requester who is making a request for records about himself or herself must verify his or her identity by providing a notarized statement or a statement under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization, stating that the requester is the person he or she claims to be.

(3) *Records about a third party.* Where a request for records pertains to a third party, a requester may receive greater access by submitting a notarized authorization signed by that individual, a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746 authorizing disclosure of the records to the requester, proof of guardianship, or proof that the individual is deceased (*e.g.,* a copy of a death certificate or an obituary). OPIC may require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable OPIC personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist OPIC in identifying the requested records, such as the project name, contract number, date or date range, country, title, name, author, recipient, subject matter of the record, or reference number. In general, requesters should include as much detail as possible about the specific records or the types of records sought. Before submitting their requests, requesters may contact OPIC's FOIA Office or FOIA Public Liaison to

discuss the records they seek and to receive assistance in describing the records. If a requester fails to reasonably describe the records sought, OPIC will inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the FOIA Office or FOIA Public Liaison. If a request does not reasonably describe the records sought, OPIC's response to the request may be delayed.

(c) *Format.* Requests may state a preferred format for released records including electronic formats. The records will be provided in the preferred format if the record is readily reproducible in that format. If you do not state a preference, you will receive any released records in the format most convenient to OPIC.

(d) *Requester information.* Requests must include the requester's name and contact information, such as phone number, email address, or mailing address, to assist OPIC in communicating with them and providing the released records.

(e) *Fees.* You should state your willingness to pay fees under these regulations or, alternately, your willingness to pay up to a specified limit. If you believe that you qualify for a partial or total fee waiver under 706.24 you should request a waiver and provide justification as required by 706.24. If your request does not contain a statement of your willingness to pay fees or a request for a fee waiver, OPIC will consider your request an agreement to pay up to $25.00 in fees.

Subpart C—Fees for Requests of Non-Public Records.

§ 706.20 In general.

OPIC will charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. For purposes of assessing fees, the FOIA establishes three categories of requests, commercial use requests, non-commercial scientific or educational institutions or news media requests, and all other requests. OPIC will inform requesters as to which category their request has been placed into. Different fees are assessed depending on the category. Requesters may seek a fee waiver. OPIC will consider requests for fee waiver in accordance with the requirements in Section 706.24. To resolve any fee issues that arise under this section, OPIC may contact a requester for additional information. OPIC will ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner. OPIC ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

§ 706.21 Types of fees.

(a) Direct costs are those expenses that OPIC expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(b) Duplication is reproducing a copy of a record or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(c) Review is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under Section 706.33(c) of this subpart, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(d) Search is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from electronic records.

§ 706.22 Request categories.

(a) A Commercial Use request is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. OPIC's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information.

(b) An Educational Use request is one made on behalf of an educational institution, defined as any school that operates a program of scholarly research. A requester in this category must show that the request is made in connection with his or her role at the educational institution. OPIC may request verification from the requester that the request is in furtherance of scholarly research.

(1) Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

(2) Example 2. A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

(3) Example 3. A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

(c) A Noncommercial Scientific Institution Use request is a request made on behalf of a noncommercial scientific institution, defined as an institution that is not operated on a ''commercial'' basis, as defined in paragraph (a) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(d) A News Media Request is a request made by a representative of the news media in that capacity. A representative of the news media is defined as any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public. A request for records that supports the

news-dissemination function of the requester shall not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, OPIC shall also consider a requester's past publication record in making this determination.

(e) All other requests include any requests that do not qualify under one of the above categories.

§ 706.23 Fees charged.

(a) In responding to FOIA requests, OPIC will charge the following fees unless a waiver or reduction of fees has been granted under section 706.24 of this section. Because the fee amounts provided below already account for the direct costs associated with a given fee type, OPIC should not add any additional costs to charges calculated under this section. (1) *Search.*

(i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. Search fees will be charged to all other requests, subject to the restrictions of paragraph (b) of this section. Fees for time spent searching is properly charged even if no responsive records are located or if all responsive records are determined to be entirely exempt from disclosure.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be as follows: Professional—$13.75; and administrative—$7.50.

(iii) Requesters will be charged the direct costs associated with conducting any search that requires the creation of a new program to locate the requested records. Before incurring such costs, OPIC will notify the requester and the requester must agree to pay.

(iv) For requests that require the retrieval of records stored at a Federal Records Center operated by the National Archives and Records Administration (NARA), additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the restrictions of paragraph (b) of this section. OPIC will honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible in the form or format requested. Where photocopies are supplied, OPIC will provide one copy per request at a cost of $0.10 per page. For copies of records produced on tapes, disks, or other electronic media, OPIC will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester must also pay the direct costs associated with scanning those materials. For other forms of duplication, OPIC will charge the direct costs.

(3) *Review.* Review fees will be charged to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.,* the review conducted by OPIC to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if the appellate authority determines that a particular exemption no longer applies, any costs associated with the re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (a)(1)(ii) of this section.

(b) *Restrictions on charging fees.* (1) No search fees will be charged for educational use requests, noncommercial scientific use requests, or news media requests as defined in Section 706.22.

(2) Fees charged when OPIC exceeds time limits.

(i) When OPIC fails to comply with the time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (b)(1) of this section, may not charge duplication fees, except as described in (b)(2)(ii)–(iv).

(ii) If OPIC has determined that unusual circumstances as defined by the FOIA apply and OPIC provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional ten days.

(iii) If OPIC has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, OPIC may charge all applicable fees incurred in processing the request if the following steps are taken:

(A) OPIC has provided timely written notice of unusual circumstances to the requester in accordance with the FOIA; and

(B) OPIC has discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

(iv) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, OPIC will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(5) If, after deducting free entitlements, the total fee calculated under this section is $25.00 or less, no fee will be charged.

(c) *Notice of anticipated fees in excess of $25.00.* (1) When OPIC determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, OPIC will notify the requester of the actual or estimated amount of the fees, including a breakdown of fees for search, review, and duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, OPIC will advise the requester accordingly. If the request is for noncommercial use, the notice will specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge, and if the requester is charged search fees, two hours of search time at no charge, and will advise the requester whether those entitlements have been provided.

(2) If OPIC notifies the requester that the actual or estimated fees are in excess of $25.00, the request will not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when

applicable, designate an exact dollar amount the requester is willing to pay. OPIC is not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but OPIC estimates that the total fee will exceed that amount, the processing of the request will be tolled when OPIC notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. OPIC will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, OPIC's time to respond will resume from where it was at the date of the notification.

(4) OPIC's FOIA Office or FOIA Public Liaison is available to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(d) *Charges for other services.* Although not required to provide special services, if OPIC chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(e) *Charging interest.* OPIC may charge interest on any unpaid bill starting on the thirty-first day following the billing date. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by OPIC. OPIC will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(f) *Aggregating requests.* If OPIC reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, OPIC may aggregate those requests and charge accordingly. OPIC may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, OPIC will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(g) *Advance payments.* (1) For requests other than those described in paragraphs (g)(2) and (g)(3) of this section OPIC will not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.,* payment before copies are sent to a requester) is not an advance payment.

(2) When OPIC determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. OPIC may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any agency within thirty calendar days of the billing date, OPIC may require that the requester pay the full amount due, plus any applicable interest on that prior request. OPIC may also require that the requester make an advance payment of the full amount of any anticipated fee before OPIC begins to process a new request or continues to process a pending request or any pending appeal. Where OPIC has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which OPIC requires advance payment, OPIC's response time will be tolled and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within thirty calendar days after the date of OPIC's fee letter, OPIC may administratively close the request.

(h) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, OPIC will inform the requester of the contact information for that program.

§ 706.24 Requirements for waiver or reduction of fees.

(a) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the interest of the requester.

(b) OPIC will furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (b)(1)–(3) are satisfied. (1) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated.

(2) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(i) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(ii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as his or her ability and intention to effectively convey information to the public shall be considered. It shall ordinarily be presumed that a representative of the news media satisfies this consideration.

(3) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, OPIC will consider the following factors:

(i) OPIC shall identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) If there is a commercial interest, OPIC will determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (b)(1) and (2) are satisfied and any commercial interest is not the primary interest furthered by the request. OPIC will ordinarily presume that when a news media requester has satisfied factors b(1) and (2) above, the request is not primarily in the

commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(c) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(d) Requests for a waiver or reduction of fees should be made when the request is first submitted to OPIC and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received.

Subpart D—Processing of Requests for Non-Public Records

§ 706.30 Responsibility for responding to requests.

(a) *Authority to grant or deny requests.* The OPIC President and CEO or designee is authorized to grant or to deny any requests for records.

(b) *Consultation, referral, and coordination.* When reviewing records responsive to a request, OPIC will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, OPIC will proceed in one of the following ways:

(1) *Consultation.* When records originated with OPIC, but contain within them information of interest to another agency or other Federal Government office, OPIC will typically consult with that other entity prior to making a release determination.

(2) *Referral.*

(i) When OPIC believes that a different agency is best able to determine whether to disclose the record, OPIC will typically refer the responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. However, if OPIC and the originating agency jointly agree that OPIC is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever OPIC refers any part of the responsibility for responding to a request to another agency, it will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if in responding to a request for records on a living third party, OPIC locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if OPIC locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, OPIC should coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by OPIC.

(c) *Classified information.* On receipt of any request involving a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records, OPIC must refer the responsibility for responding to the request to the agency that classified the information, or that should consider the information for classification. Whenever OPIC's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), OPIC must refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(d) Timing of responses to consultations and referrals. All consultations and referrals will be handled according to the date that the first agency received the perfected FOIA request.

(e) Agreements regarding consultations and referrals. OPIC may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

§ 706.31 Timing of responses to requests.

(a) *In general.* OPIC ordinarily will process requests according to their order of receipt within their appropriate track under subpart (b) of this section. The response time will commence on the date that the request is received by the FOIA Office, but in any event not later than ten working days after the request is first received by OPIC. Any time tolled under subparagraph (c) of this section does not count against OPIC's response time.

(b) *Multitrack processing.* OPIC has a track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (f) of this section. Non-expedited requests will be placed into a ''simple'' or ''complex'' track based on the estimated amount of work or time needed to process the request. OPIC will consider the number of records requested, the number of pages involved in processing the request, and the need for consultations or referrals. OPIC will advise the requester into which track the request falls and, when appropriate, will offer requesters the opportunity to narrow or modify the request so that it can be placed in a different track.

(c) *Tolling of response time.* OPIC may toll its response time once to seek clarification of a request in accordance with Section 706.11(b) or as needed to resolve fee issues in accordance with Sections 706.22(c) and 706.23(d). The response time will resume upon OPIC's receipt of the requester's clarification or upon resolution of the fee issue.

(d) *Unusual circumstances.* Whenever the statutory time limits for processing cannot be met because of ''unusual circumstances'' as defined in the FOIA, and OPIC extends the time limits on that basis, OPIC will notify the requester in writing of the unusual circumstances involved and of the date by which OPIC estimates processing of the request will be completed. Where the extension exceeds ten working days, the requester will be provided an opportunity to modify the request or agree to an alternative time period for processing the original or modified request. OPIC will make its FOIA Office and its FOIA Public Liaison available for this purpose and will notify the requester of the availability of the Office of Government Services (OGIS) dispute resolution services.

(e) *Aggregating requests.* For the purposes of satisfying unusual circumstances under the FOIA, OPIC

may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. OPIC will not aggregate multiple requests that involve unrelated matters.

(f) *Expedited processing.*

(1) Requests and appeals will be processed on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person who is primarily engaged in disseminating information;

(2) A request for expedited processing may be made at any time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (f)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ''urgency to inform'' the public on the topic. OPIC may waive the formal certification requirement in its administrative discretion.

(4) OPIC shall notify the requester within ten calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If OPIC denies expedited processing, any appeal of that decision which complies with the procedures set forth in Section 706.34 of this subpart shall be acted on expeditiously.

§ 706.32 Responses to requests.

(a) *In general.* To the extent practicable, OPIC will communicate electronically with requesters who have access to the internet.

(b) *Acknowledgments of requests.* If a request will take longer than ten days to process, OPIC will send the requester an acknowledgment letter that assigns the request an individualized tracking number. The letter will include a brief description of the records sought to allow requesters to more easily keep track of requests.

(c) *Grants of requests.* OPIC will notify the requester in writing if it makes a determination to grant a request in full or in part. The notice will inform the requester of any fees charged under Section 706.22 of this part and of the availability of the FOIA Public Liaison to offer assistance. OPIC will disclose the requested records to the requester promptly upon payment of any applicable fees.

(d) *Adverse determinations of requests.* OPIC will notify the requester in writing if it makes an adverse determination denying a request in any respect. Adverse determinations, or denials of requests, include decisions that: The requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(e) *Content of denial letter.* The denial letter will be signed by the person responsible for the denial, and will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemptions applied;

(3) An estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation. This estimation is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;

(4) A brief description of the types of information withheld and the reasons for doing so. A description and explanation are not required if providing it would harm an interest protected by an applicable exemption;

(5) A statement that the denial may be appealed under Section 706.34(a) of this subpart, and a description of the appeal requirements;

(6) A statement notifying the requester of the assistance available from OPIC's FOIA Public Liaison and dispute resolution services offered by OGIS; and

(7) Notice of any fees charged under Section 706.23 of this part.

(f) *Markings on released documents.* Records disclosed in part must be marked clearly to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. If technically feasible, the location of the information deleted will be indicated on the record.

(g) *Notice of record exclusions.* (1) In the event that OPIC identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the agency will confer with the Department of Justice, Office of Information Policy, to obtain approval to apply the exclusion.

(2) OPIC will maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

§ 706.33 Confidential commercial information.

(a) *Definitions.*

(1) *Confidential commercial information* means commercial or financial information obtained by the agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA. Exemption 4 protects:

(i) Trade secrets; or

(ii) Commercial or financial information that is privileged or confidential where either: Disclosure of the information would cause substantial competitive harm to the submitter, or the information is voluntarily submitted and would not customarily be publicly released by the submitter. Information which is required to apply for OPIC support is not considered to be voluntarily submitted.

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides confidential commercial information to the Federal government, directly or indirectly.

(b) *Designation of confidential commercial information.* All submitters may designate, by appropriate markings, any portions of their submissions that they consider to be protected from

disclosure under the FOIA. These markings will be considered by OPIC in responding to a FOIA request but such markings (or the absence of such markings) will not be dispositive as to whether the marked information is ultimately released. Unless otherwise requested and approved these markings will be considered no longer applicable ten years after submission or five years after the close of the associated project, whichever is later.

(c) *When notice to submitters is required.* (1) Except as provided in paragraph (d) of this section, OPIC's FOIA Office will use reasonable efforts to notify a submitter in writing whenever:

(i) The requested information has been designated in good faith by the submitter as confidential commercial information protected from disclosure under Exemption 4; or

(ii) OPIC has reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure.

(2) This notification will describe the nature and scope of the request, advise the submitter of its right to submit written objections in response to the request, and provide a reasonable time for response. The notice will either describe the commercial information requested or include copies of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

(d) *Exceptions to submitter notice requirements. The notice requirements of this section shall not apply if:*

(1) OPIC determines that the information is exempt under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such case, OPIC will give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.* (1) OPIC will specify a reasonable time period within which the submitter must respond to the notice referenced above.

(2) If a submitter has any objections to disclosure, it should provide OPIC with a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In setting forth such grounds, the submitter should explain the basis of its belief that the nondisclosure of any item of information requested is mandated or permitted by law. In order to rely on Exemption 4 as a basis for nondisclosure, the submitter shall explain why the information is considered a trade secret or commercial or financial information that is privileged or confidential and either: How disclosure of the information would cause substantial competitive harm to the submitter, or why the information should be considered voluntarily submitted and why it is information that would not customarily be publicly released by the submitter.

(3) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. OPIC is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(4) The period for providing OPIC with objections to disclosure of information may be extended by OPIC upon receipt of a written request for an extension from the submitter. Such written request shall set forth the date upon which any objections are expected to be completed and shall provide reasonable justification for the extension. In its discretion, OPIC may permit more than one extension.

(f) *Analysis of objections.* OPIC will consider a submitter's objections and specific grounds for nondislosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* If OPIC decides to disclosure information over the objection of a submitter, OPIC will notify the submitter of its determination at least five working days prior to release of the information. The notification will include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed, or a copy thereof; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a FOIA lawsuit seeking to compel the disclosure of confidential commercial information, OPIC will promptly notify the submitter.

(i) *Requester notification.* OPIC will notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 706.34 Administrative appeals.

(a) *Requirements for making an appeal.* A requester may appeal any adverse determinations to OPIC's Vice President and General Counsel at *FOIA@opic.gov* or 1100 New York Avenue NW., Washington, DC 20527. Examples of adverse determinations are provided in Section 706.06(c) of this subpart. The requester must make the appeal in writing and it must be postmarked, or in the case of electronic submissions, transmitted, within ninety calendar days after the date of the response. The appeal should clearly identify OPIC's determination that is being appealed and the assigned request number. The requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, ''Freedom of Information Act Appeal.''

(b) *Adjudication of appeals.* OPIC's Vice President and General Counsel or his/her designee will render a written decision within twenty working days after the date of OPIC's receipt of the appeal, unless an extension of up to ten working days is deemed necessary due to unusual circumstances. The requester will be notified in writing of any extension.

(c) *Decisions on appeals.* A decision that upholds the initial determination will contain a written statement that identifies the reasons for the affirmance, including any FOIA exemptions applied, and will provide the requester with notification of the statutory right to file a lawsuit and the ability to request mediation from the Office of Government Information Services. If an initial determination is remanded or modified on appeal the requester will be notified in writing. OPIC's FOIA Office will then process the request in accordance with that appeal determination and respond directly to the requester. If an appeal is granted in whole or in part, the information will be made available promptly, provided the requirements of Section 706.23 regarding payment of fees are satisfied.

(d) *Engaging in dispute resolution services provided by OGIS.* Mediation is a voluntary process. If OPIC agrees to participate in the mediation services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(e) *When appeal is required.* Before seeking court review, a requester generally must first submit a timely administrative appeal.

Dated: December 15, 2016.

Nichole Skoyles,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2016–30661 Filed 12–21–16; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0727; FRL–9957–13–Region 9]

Limited Federal Implementation Plan; Prevention of Significant Deterioration Requirements for Fine Particulate Matter ($PM_{2.5}$); California; North Coast Unified Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this rulemaking, the Environmental Protection Agency (EPA) is proposing a limited Federal Implementation Plan (FIP) under the Clean Air Act (CAA or Act) to apply to the North Coast Unified Air Quality Management District (North Coast Unified AQMD or District) in California. This limited FIP would implement provisions to regulate fine particulate matter ($PM_{2.5}$) under the CAA Prevention of Significant Deterioration (PSD) program within the District. The EPA previously issued two findings of failure to submit a State Implementation Plan (SIP) addressing these PSD requirements and also issued a partial disapproval action applicable to the North Coast Unified AQMD portion of the California SIP that triggered the duty under CAA section 110(c)(1) for the EPA to promulgate this limited FIP. If we finalize this action as proposed, the EPA will be the CAA PSD permitting authority for any new or modified major sources subject to PSD review for $PM_{2.5}$ or its precursors within the District.

DATES: Any comments must arrive by January 23, 2017. If a public hearing is held, the public comment period will automatically be extended and will close on February 13, 2017. *Public Hearing:* If any party contacts us in writing by December 29, 2016 to request that a public hearing be held, we will hold a public hearing on January 13, 2017 at 9:00 a.m. Please see the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections of this notice for additional information on the public hearing and how to determine whether the comment period has been extended.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R09–OAR–2016–0727 at *http://www.regulations.gov,* or via email to *r9airpermits@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index for this rulemaking. 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 form. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, during normal business hours. For security purposes, please contact the persons identified in the **FOR FURTHER INFORMATION CONTACT** section during normal business hours to view a hard copy of the docket.

Public Hearing: A public hearing, if requested, will be held in EPA Region IX's Conference Center, located at 75 Hawthorne St., San Francisco, CA 94105. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

FOR FURTHER INFORMATION CONTACT:

Public hearing and comment period: Thien Khoi Nguyen, (415) 947–4120 or *nguyen.thien@epa.gov.*

Technical information: Laura Yannayon, (415) 972–3534 or *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to the EPA.

Public Hearing: If you wish to request a public hearing and present testimony at the hearing, you must make your request in writing to Ms. Nguyen of EPA Region IX on or before December 29, 2016. Ms. Nguyen's contact information is found in **FOR FURTHER INFORMATION CONTACT** section. If no requests for a public hearing are received by close of business on December 29, 2016, a hearing will *not* be held; please contact Ms. Nguyen or check the EPA's Public Notice Web site at *https://www.epa.gov/publicnotices* to verify if the hearing will actually be held and whether the comment period will be automatically extended.

At the hearing, the hearing officer may limit oral testimony to 5 minutes per person. The hearing will be limited to the subject matter of this proposal, the scope of which is discussed below. The EPA will not respond to comments during the public hearing. When we publish our final action we will provide a written response to all written or oral comments received on the proposal. Any member of the public may provide written or oral comments pertaining to our proposal at the hearing. Note that any written comments and supporting information submitted during the comment period will be considered with the same weight as any oral comments presented at the public hearing. Interested parties may also submit written comments, as discussed elsewhere in this notice.

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I. Background
II. Proposed Action
III. Statutory and Executive Order Reviews

I. Background

In 2008, the EPA promulgated a rulemaking finalizing regulations to implement the New Source Review

program for $PM_{2.5}$ ($PM_{2.5}$ NSR Rule).[1] The $PM_{2.5}$ NSR Rule required, among other things, that states develop SIPs addressing the PSD permitting requirements for the regulation of major stationary sources and major modifications of $PM_{2.5}$ emissions, including such sources emitting precursors of $PM_{2.5}$. In 2010, the EPA promulgated a rulemaking amending the PSD program regulations for $PM_{2.5}$ to add provisions governing the maximum allowable increases in ambient pollutant concentrations (increments), with which new major stationary sources and major modifications of $PM_{2.5}$ and $PM_{2.5}$ precursor emissions must demonstrate compliance as a condition of obtaining a PSD permit ($PM_{2.5}$ Increments Rule).[2] The $PM_{2.5}$ Increments Rule requires states to submit SIPs modifying their PSD permitting regulations to incorporate the $PM_{2.5}$ increment provisions.

On January 15, 2013, the EPA issued a finding of failure to submit for the State of California in which it found that California had failed to make an infrastructure[3] SIP submittal providing certain required basic program elements of CAA section 110(a)(2) necessary to implement the 2008 Ozone National Ambient Air Quality Standard (NAAQS).[4] Relevant here, the EPA found that California had not submitted a SIP to address the PSD permitting requirements of CAA section 110(a)(2)(C), (D)(i)(II), and (J) for areas including the North Coast Unified AQMD. That finding resulted in a deadline of February 14, 2015, for the EPA to promulgate a FIP pursuant to CAA section 110(c)(1) to address the outstanding SIP elements unless, prior to that time, the State submitted, and the EPA approved, a SIP that corrected the identified deficiencies.[5]

On April 1, 2016, the EPA published a final rule partially approving and partially disapproving several CAA infrastructure SIP revisions submitted by the State of California related to the implementation, maintenance and enforcement of the NAAQS for ozone, $PM_{2.5}$, lead, nitrogen dioxide (NO_2), and sulfur dioxide (SO_2).[6] We partially disapproved a portion of these infrastructure SIP submittals as they pertained to the North Coast Unified AQMD with respect to the PSD-related requirements of CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for all of these NAAQS, in part because we found that the District's SIP-approved PSD program did not include requirements for the regulation of $PM_{2.5}$ and $PM_{2.5}$ precursors, condensable $PM_{2.5}$, or PSD increments for $PM_{2.5}$.[7] This infrastructure SIP partial disapproval action also triggered a duty for the EPA to promulgate a FIP pursuant to CAA section 110(c)(1) to address the identified deficiencies related to the District's PSD program for $PM_{2.5}$, unless, prior to that time, the State submitted, and the EPA approved, a SIP that corrected the identified deficiencies.[8] The EPA has not approved a SIP revision for California to date that would address the North Coast Unified AQMD's SIP deficiencies relating to the PSD program for $PM_{2.5}$. Thus, for these $PM_{2.5}$ PSD requirements, the EPA remains subject to the duty to promulgate a FIP for the District that was triggered by our January 15, 2013 finding of failure to submit and our April 1, 2016 partial disapproval action for the infrastructure SIP requirements for the NAAQS discussed above.

On September 2, 2014 the EPA published a final rule finding that the North Coast Unified AQMD had failed to make a complete submittal to address new requirements for $PM_{2.5}$ increments in its PSD program as required by implementing regulations that the EPA promulgated on October 20, 2010.[9] That finding resulted in a duty and a deadline of October 2, 2016, for the EPA to promulgate a FIP pursuant to CAA section 110(c)(1) to address these outstanding SIP elements unless, prior to that time, the State submitted, and the EPA approved, a SIP that corrected the identified deficiencies. As noted above, the EPA has not approved a SIP revision for California that would address the requirements for $PM_{2.5}$ increments in the PSD program for the North Coast Unified AQMD, thus the EPA remains subject to the requirement that it promulgate a FIP to do so.

II. Proposed Action

In this rulemaking, the EPA is promulgating a limited FIP to apply the EPA's PSD regulatory program under 40 CFR 52.21 to sources subject to PSD review for emissions of $PM_{2.5}$ or $PM_{2.5}$ precursors in the North Coast Unified AQMD. CAA section 110(c)(1) requires the Administrator to promulgate a FIP at any time within two years after the Administrator either finds that a state has failed to make a required submission or disapproves a state's SIP in whole or in part, unless the state submits and the EPA approves a SIP that corrects the deficiency before the Administrator promulgates a FIP. As indicated earlier in this notice, the EPA has not approved a PSD SIP revision for California to regulate $PM_{2.5}$ and $PM_{2.5}$ precursors in the North Coast Unified AQMD that would address the District's $PM_{2.5}$ PSD program deficiencies identified in the January 15, 2013, September 2, 2014, and April 1, 2016 EPA actions discussed above. Accordingly, as authorized by CAA section 110(c)(1), the EPA is proposing to promulgate a limited FIP for the North Coast Unified AQMD in order to address the identified deficiencies in the State's PSD program with respect to the regulation of major stationary sources and major modifications of sources subject to PSD review for emissions of $PM_{2.5}$ or $PM_{2.5}$ precursors.

The limited FIP proposed in this action consists of the EPA regulations found in 40 CFR 52.21, including the PSD applicability provisions, with a limitation to assure that, strictly for purposes of this rulemaking, the FIP applies only to the regulation of $PM_{2.5}$ and $PM_{2.5}$ precursors. Accordingly, for the purposes of ensuring compliance with the PSD permitting requirements with respect to $PM_{2.5}$ and $PM_{2.5}$ precursors for sources within the North Coast Unified AQMD, the EPA would serve as the PSD permitting authority.

We note that the EPA has previously promulgated limited CAA PSD FIPs for the North Coast Unified AQMD to implement the federal PSD permitting program under 40 CFR 52.21 for certain other sources and pollutants, including the PSD program as it regulates NO_X as an ozone precursor, as discussed above; these limited FIPs remain in effect. See 40 CFR 52.270(b)(2). The EPA and the District have entered into partial delegation agreements pursuant to 40 CFR 52.21(u), dated January 8, 1993 and

[1] Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.}$), 73 FR 28321 (May 16, 2008).

[2] Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentrations (SMC), 75 FR 64864 (Oct. 20, 2010). The $PM_{2.5}$ Increments Rule also promulgated several optional revisions to the PSD permitting program which are not addressed in this notice.

[3] We refer to such SIP revision submittals as ''infrastructure'' SIPs because they are intended to address the basic structural SIP requirements for new or revised NAAQS.

[4] 78 FR 2882, 2889.

[5] See 78 FR at 2886.

[6] 81 FR 18766.

[7] The EPA's April 1, 2016 partial disapproval action for infrastructure SIP requirements in CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for the North Coast Unified AQMD was also based on the EPA's finding that the District's SIP-approved PSD program did not regulate oxides of nitrogen (NO_X) as an ozone precursor. 81 FR at 18773. However, we noted in that action that the EPA had already promulgated a limited FIP on August 8, 2011 to remedy that SIP deficiency, and thus our 2016 partial disapproval action did not trigger a new PSD FIP obligation related to NO_X as an ozone precursor. See 81 FR at 18773, 18775; see also 76 FR 48006 (Aug. 8, 2011).

[8] See 81 FR at 18775–18776.

[9] 79 FR 51913.

October 6, 2015, whereby the EPA has delegated authority to the District to conduct PSD review for certain sources subject to these limited PSD FIPs.[10] For all other major emitting facilities and pollutants not covered by the limited PSD FIPs applicable to the District as specified in 40 CFR 52.270(b)(2), the North Coast Unified AQMD will continue to serve as the PSD permitting authority under its SIP-approved PSD program.

This proposed FIP is narrow in scope, in that it will only address the $PM_{2.5}$ PSD deficiencies for the District that were identified in our 2016 infrastructure SIP partial disapproval action. We note that such deficiencies include the deficiencies for PSD requirements for $PM_{2.5}$ increments that were also the focus of the EPA's September 2, 2014 finding of failure to submit action.

If finalized, today's proposed limited FIP action would satisfy the remaining FIP requirements for the North Coast Unified AQMD that were triggered by our January 15, 2013 finding of failure to submit relating to ozone infrastructure SIP requirements; our September 2, 2014 finding of failure to submit related to the District's PSD requirements for $PM_{2.5}$ increments; and our April 1, 2016 partial disapproval action for the infrastructure SIP requirements for the NAAQS for ozone, $PM_{2.5}$, lead, NO_2, and SO_2. The proposed FIP will be codified in 40 CFR 52.270(b)(2)(v).

If finalized, this limited FIP will remain in place until California submits a SIP revision addressing the identified deficiencies relating to the District's PSD program for $PM_{2.5}$ and we approve that SIP revision. The EPA is soliciting public comments on this proposal and will accept comments until the date noted in the ''DATE'' section above.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning, and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations for PSD (*e.g.,* 40 CFR 52.21) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0003. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities. Although this rule could lead to federal permitting requirements for a handful of sources in the North Coast Unified AQMD, the EPA believes that in such an event, there will not be a significant economic impact on the potentially affected sources and that any such impacts would not affect a substantial number of sources, regardless of size.

In this action, the EPA is proposing a narrow FIP that would apply federal PSD regulations for certain new or modified major stationary sources with emissions of $PM_{2.5}$ or its precursors within the North Coast Unified AQMD. General PSD requirements for major emitting facilities with emissions of other regulated NSR pollutants already apply within the District, thus the incremental impact associated with application of the specific requirements of the PSD regulations for certain sources emitting $PM_{2.5}$ or its precursors is expected to be relatively minor. In addition, there are few major emitting facilities currently located in the District that would be subject to the requirements of the FIP. The EPA is not aware of any specific new sources that would be subject to regulation under our proposed narrow FIP in the future. For these reasons, the EPA anticipates that any additional burden imposed as a result of this proposed FIP would be minimal and would affect few, if any, sources. Accordingly, the EPA does not believe that such a FIP would have a significant economic impact on sources in the District, regardless of size.

D. Unfunded Mandates Reform Act

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While the EPA's proposed action will lead to the application of federal PSD regulations for $PM_{2.5}$ to sources within the North Coast Unified AQMD, general PSD requirements for major emitting facilities with emissions of other regulated NSR pollutants already apply within the District, and thus the incremental impact associated with application of the specific requirements of the PSD regulations for certain sources emitting $PM_{2.5}$ or its precursors is expected to be relatively minor. In addition, there are few major emitting facilities currently located in the District that would be subject to the requirements of the FIP. The EPA is not aware of any specific new sources that would be subject to regulation under our proposed narrow FIP in the future. Accordingly, the EPA has determined that this action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and that it will not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

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.

F. Executive Order 13175: Coordination and Consultation With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. The FIP is not proposed 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may

[10] If the EPA takes final action to promulgate this limited PSD FIP for $PM_{2.5}$ and $PM_{2.5}$ precursors, the District may similarly seek a partial delegation of authority from the EPA, pursuant to 40 CFR 52.21(u), to conduct PSD review for the sources regulated under this limited PSD FIP.

disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because, as a limited FIP establishing PSD regulatory requirements for the $PM_{2.5}$ NAAQS for certain sources located in the North Coast Unified AQMD, it implements a previously promulgated federal standard.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action does not affect the level of protection provided to human health or the environment. With this action, the EPA is only proposing to implement the PSD permitting requirements mandated by the CAA in order to ensure compliance with the $PM_{2.5}$ NAAQS and $PM_{2.5}$ increments, which were promulgated in separate, prior rulemakings.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 14, 2016.

Deborah Jordan,

Acting Regional Administrator, Region IX.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 52 as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Amend § 52.270 by adding paragraph (b)(2)(v) to read as follows:

§ 52.270 Significant deterioration of air quality.

* * * * *

(b) * * *

(2) * * *

(v) Those projects that are major stationary sources or major modifications for emissions of $PM_{2.5}$ or its precursors under § 52.21, and those projects that are major stationary sources under § 52.21 with the potential to emit $PM_{2.5}$ or its precursors at a rate that would meet or exceed the rates specified at § 52.21(b)(23)(i).

* * * * *

[FR Doc. 2016–30768 Filed 12–21–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 213, 219, 237, and 252

[Docket DARS–2016–0034]

RIN 0750–AJ06

Defense Federal Acquisition Regulation Supplement: Competition for Religious-Related Services Contracts (DFARS Case 2016–D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act that provides the competition requirements for religious-related services contracts on a U.S. military installation.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before February 21, 2017, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2016–D015, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Search for ''DFARS Case 2015–D015.'' Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2015–D015'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2016–D015 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Lee Renna, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Lee Renna, telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 898 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). Section 898 requires that DoD not preclude a nonprofit organization from competing for a contract for religious-related services on a U.S. military installation. Religious-related services typically performed on U.S. military installations range from choir and pastoral services, to counseling of service members and their families to help them deal with the unique pressures and stresses associated with military service. The latter includes, but is not limited to, suicide prevention; coping with post-traumatic stress, depression, and sexual assault; providing marriage and family counseling; and providing religious and moral guidance. The Senate Committee Report 114–49 associated with the NDAA for FY 2016 made the following statement regarding the recommendation for a provision to ensure non-profit organizations can compete on contracts for such religious-related services:

> ''It has come to the committee's attention that the Department of Defense has at times restricted competition for religious services contracts on U.S. military installations to for-profit firms. The committee believes certain non-profit entities such as religious organizations can provide valuable competition and are well-qualified to participate in this particular category of services and should not be precluded from competing for these types of contracts.''

II. Discussion and Analysis

The following changes to the DFARS are proposed to implement section 898

in a manner that minimizes the impact on small businesses:

• A new DFARS subpart 237.7X, Competition for Religious-Related Services, is proposed to implement the requirements of section 898 for the covered services. Specifically, this subpart establishes that a nonprofit organization may not be precluded from competing for contracts for religious-related services on a U.S. military installation. A cross-reference to DFARS 219.270 is also provided to direct contracting officers to guidance on the treatment of set-asides for small business concerns.

• A new DFARS section 219.270, Religious-Related Services—Inclusion of Nonprofit Organizations, is proposed to clarify that when acquiring religious-related services on a U.S. military installation, nonprofit organizations may not be precluded from competing, even when a small business set-aside is used, and that none of the exceptions for other than full and open competition at FAR 6.302–5(b)(4) through (7) may be used for such procurements. These changes are necessary to ensure that contracting officers issue solicitations for the covered services on a competitive basis and are aware that set-asides may still be used, though offers from nonprofit organizations may be considered for award. In addition, this section clarifies that if an apparently successful offeror has not represented in its offer that it is a small business concern of a type that meets set-aside requirements of the solicitation, then the contracting officer shall verify that the offeror is registered in the System for Award Management (SAM) database as a nonprofit organization.

• A new provision is proposed at DFARS 252.219–70XX, Competition for Religious-Related Services, which is prescribed at DFARS 219.270 for use in solicitations for the acquisition of religious-related services on a U.S. military installation that will be set-aside for one of the small business programs identified at FAR 19.000(a)(3). The solicitation not only provides notice to potential offerors that a nonprofit will not be precluded from competing for award, but also advises nonprofit organizations that the contracting officer will verify that it is registered as a nonprofit organization in SAM before considering it for award. Conforming changes are made to DFARS 212.301(f)(vii) to ensure the provision is also used in commercial acquisitions.

• Similar to the changes proposed at DFARS 219.270, a new paragraph (b) is proposed to be added to DFARS 213.7001 to direct contracting officers not to use the sole source authority at FAR 6.302–5(b)(4) and not to exclude a nonprofit organizations from participating in competitive procurements under the 8(a) program.

• A definition of ''nonprofit organization'' is also provided where the term is used in the rule. The definition proposed in the rule is the same as the definition provided in FAR subpart 26.4 and the clause at 52.226–6, Promoting Excess Food Donations to Nonprofit Organizations. The definition also aligns with the description of a nonprofit organization provided in the SAM database.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule implements section 898 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). Section 898 requires that DoD may not preclude a nonprofit organization from competing for a contract for religious-related services on a U.S. military installation. The rule creates one new provision, DFARS 252.219–70XX, Competition for Religious-Related Services.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT)

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulation (FAR) Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Director, Defense Procurement and Acquisition Policy (DPAP), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Likewise, 41 U.S.C. 1907 governs the applicability of laws to COTS items, with the Administrator for Federal Procurement Policy the decision authority to determine that it is in the best interest of the Government to apply a provision of law to acquisitions of COTS items in the FAR. The Director, DPAP, is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

C. Determination

DoD is proposing to apply the requirements of section 898 to contracts at or below the SAT and contracts for the acquisition of commercial items, not including COTS items. Section 898 addresses competitive acquisitions for religious-related services to be performed on a U.S. military installation. It is in the best interest of the Federal Government to apply the rule to acquisitions not greater than the SAT and those for the acquisition of commercial items (excluding COTS items), because a portion of DoD's acquisitions for these types of services will result in the award of contracts at or below the SAT or for commercial items. An exception for contracts not greater than the SAT or for the acquisition of commercial items, would exclude contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law. Since section 898 of the NDAA for FY 2016 specifically focuses on the competitive acquisition of a service requirement, the changes contemplated by this rule are not applicable to contracts for COTS items. DoD will make the final determination with regard to application to acquisitions below the SAT and to those for commercial items after receipt and analysis of public comments.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD expects that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an initial regulatory flexibility analysis has been prepared and is summarized as follows:

The purpose of this proposed rule is to revise the Defense Federal Acquisition Regulation Supplement to implement policies and procedures to ensure that DoD does not preclude a nonprofit organization from competing for a contract for religious-related services on a U.S. military installation.

This rule is necessary to implement section 898 of the National Defense Authorization Act for Fiscal Year (FY) 2016, which is the legal basis for the rule.

This rule may have a significant economic impact on a substantial number of small businesses that typically compete for contracts for the covered services, since most of the contracts awarded for religious-related services fall within the dollar range reserved exclusively for small business participation (over $3,500, but no more than $150,000). The rule may also have a significant economic impact on nonprofit organizations, since these entities are normally precluded from competing for such acquisitions that are reserved for small business concerns.

According to data obtained from the Federal Procurement Data System (FPDS) for FY 2015, DoD awarded 290 contracts to 232 unique businesses for religious-related services under the Product Services Code (PSC) for Chaplain Services (G002), the majority of which (95 percent) are valued below the simplified acquisition threshold (SAT) of $150,000. Of those 290 contracts, approximately 160 contracts were awarded to 130 unique small business concerns (56 percent). The FPDS data further indicates that of the 160 contracts awarded to small business, 137 of the contracts were awarded on the basis of a total small business set-aside, including one total set-aside to women-owned small business concerns. In addition, in order to carry out the Congressional mandate of section 898, this rule restricts the use of the sole source authorities at FAR 6.302–5(b)(4) through (7) when contracting for religious-related services on U.S. military installations; as a result, such solicitations would have to be competed in a manner that allows nonprofit organizations to participate. Analysis of FPDS data for FY 2015 reveals that four contracts were awarded to a HUBZone small business concern on a sole source basis.

Additional FPDS data was obtained for FY 2016, which showed DoD awarded 256 contracts to 212 unique businesses for religious-related services under PSC G002, of which the majority (91 percent) were valued below the SAT. Of those 256 contracts, 158 contracts (62 percent) were awarded to 130 unique small business concerns (63 percent). 116 contracts were solicited using a total small business set-aside. Again, as a result of this rule, such solicitations could not preclude a nonprofit organization from submitting an offer and being considered for award. Six contracts were awarded on a sole source basis under the Small Business Act 8(a) Business Development Program (8(a) Program); however, this rule restricts DoD contracting officers from using the sole source authority at FAR 6.302–5(b)(4) for the 8(a) Program to procure religious-related services to be performed on a U.S. military installation. In order to comply with section 898, any requirements currently in the 8(a) program would be required, upon renewal, to be solicited in a manner that does not preclude a nonprofit organization from the competition.

There are no reporting, recordkeeping, or other compliance requirements associated with this rule. The rule does not duplicate, overlap, or conflict with any other Federal rule.

There are no significant alternative approaches to the proposed rule that would minimize the impact on small entities and meet the stated objectives of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2016–D015), in correspondence.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 213, 219, 237, and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 213, 219, 237, and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 213, 219, 237, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by adding new paragraph (f)(vii)(D) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(vii) * * *

(D) Use the provision at 252.219–70XX, Competition for Religious-Related Services, as prescribed in 219.270–3.

* * * * *

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 3. Amend section 213.7001 by—

■ a. Redesignating paragraphs (a)(1) and (2) as paragraphs (a)(1)(i) and (ii), respectively;

■ b. Redesignating the introductory text as paragraph (a)(1);

■ c. Redesignating paragraph (b) as paragraph (a)(2); and

■ d. Adding a new paragraph (b).

The addition reads as follows:

213.7001 Procedures.

* * * * *

(b) To comply with section 898 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), contracting officers shall not use the sole source authority at FAR 6.302–5(b)(4) to purchase religious-related services to be performed on a U.S. military installation. For competitive purchases under the 8(a) program, contracting officers shall not exclude a nonprofit organization from the competition. See 219.270 for additional procedures.

PART 219—SMALL BUSINESS PROGRAMS

■ 4. Add sections 219.270, 219.270–1, 219.270–2, and 219.270–3 to subpart 219.2 to read as follows:

219.270 Religious-related services—inclusion of nonprofit organizations.

219.270–1 Definition.

Nonprofit organization, as used in this section, means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

219.270–2 Procedures.

(a) To comply with section 898 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), when acquiring religious-related services to be performed on a U.S. military installation—

(1) Do not preclude a nonprofit organization from competing, even when the acquisition is set aside for small businesses as identified in FAR 19.000(a)(3); and

(2) Do not use any of the sole source exceptions at FAR 6.302–5(b)(4) through (7) for such acquisitions.

(b) If the apparently successful offeror has not represented in its quotation or offer that it is one of the small business concerns identified in FAR 19.000(a)(3), the contracting officer shall verify that the offeror is registered in the System for Award Management database as a nonprofit organization.

219.270–3 Solicitation provision.

Use the provision 252.219–70XX, Competition for Religious-Related Services, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for the acquisition of religious-related services to be performed on U.S. military installations, when the acquisition is set aside for any of the small business concerns identified in FAR 19.000(a)(3).

PART 237—Service Contracting

■ 5. Add new subpart 237.7X to read as follows:

SUBPART 237.7X—COMPETITION FOR RELIGIOUS-RELATED SERVICES

Sec.
237.7X00 Scope of subpart.
237.7X01 Definition.
237.7X02 Policy.

SUBPART 237.7X—COMPETITION FOR RELIGIOUS-RELATED SERVICES

237.7X00 Scope of subpart.

This subpart provides policy and guidance for the acquisition of religious-related services to be performed on a U.S. military installation in accordance with section 898 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92).

237.7X01 Definition.

As used in this subpart—

Nonprofit organization means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

237.7X02 Policy.

(a) A nonprofit organization shall not be precluded from competing for a contract for religious-related services to be performed on a U.S. military installation.

(b) See 219.270 when an acquisition for religious-related services to be performed on a U.S. military installation is set aside for any of the small business concerns identified in FAR 19.000(a)(3).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Add section 252.219–70XX to read as follows:

252.219–70XX Competition for Religious-Related Services.

As prescribed in 219.270–3, use the following provision: COMPETITION FOR RELIGIOUS-RELATED SERVICES (DATE)

(a) *Definition.* As used in this provision—

Nonprofit organization means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

(b) A nonprofit organization is not precluded from competing for a contract for religious-related services to be performed on a U.S. military installation notwithstanding that a nonprofit organization is not a small business concern as identified in FAR 19.000(a)(3).

(c) If the apparently successful offeror has not represented in its offer or quotation that it is a small business concern identified in FAR 19.000(a)(3), as appropriate to the solicitation, the Contracting Officer will verify that the offeror is registered in the System for Award Management (SAM) database as a nonprofit organization.

(End of provision)

[FR Doc. 2016–30597 Filed 12–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215 and 252

[Docket DARS–2016–0004]

RIN 0750–AI84

Defense Federal Acquisition Regulation Supplement: Independent Research and Development Expenses (DFARS Case 2016–D017)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to ensure that substantial future independent research and development expenses, as a means to reduce evaluated bid prices in competitive source selections, are evaluated in a uniform way during competitive source selections. The comment period on the proposed rule is extended 30 days.

DATES: For the proposed rule published on November 4, 2016 (81 FR 78014), submit comments by February 2, 2017.

ADDRESSES: Submit comments identified by DFARS Case 2016–D017, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Search for ''DFARS Case 2016–D017.'' Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2016–D017'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2016–D017 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6099.

SUPPLEMENTARY INFORMATION:

I. Background

On November 4, 2016, DoD published a proposed rule in the **Federal Register** at 81 FR 78014 to revise the DFARS to ensure that substantial future independent research and development (IR&D) expenses, used as a means to reduce evaluated bid prices, are evaluated in a uniform way during competitive source selections.

The comment period for the proposed rule is extended 30 days, from January 3, 2017, to February 2, 2017, to provide additional time for interested parties to comment on the proposed DFARS changes.

List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2016–30750 Filed 12–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2015–0028; FXES11130900000C2–167–FF09E32000]

RIN 1018–AX99

Endangered and Threatened Wildlife and Plants; Removal of the Hualapai Mexican Vole From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our proposed rule to remove the Hualapai Mexican vole from the Federal List of Endangered and Threatened Wildlife. We are reopening the comment period for 30 days in order to publish a summary of the proposed regulation in a newspaper of general circulation and to allow for all interested parties further opportunity to comment on the proposed rule. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final listing determination.

DATES: The comment period for the proposed rule that published June 4, 2015 (80 FR 31875), is reopened. To allow us adequate time to consider your comments on the proposed rule, we must receive your comments on or before January 23, 2017.

ADDRESSES: *Written comments:* You may submit comments on the proposed rule and draft post-delisting monitoring plan by one of the following methods:

- *Federal eRulemaking Portal:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the docket number for the proposed rule, which is FWS–R2–ES–2015–0028. Then click on the Search button. On the resulting page, you may submit a comment by clicking on ''Comment Now!'' Please ensure that you have found the correct rulemaking before submitting your comment.
- *By U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R2–ES–2015–0028, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see **SUPPLEMENTARY INFORMATION** for more information).

Document availability: Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov* under Docket No. FWS–R2–ES–2015–0028.

FOR FURTHER INFORMATION CONTACT: Steven Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 9828 North 31st Avenue, #C3, Phoenix, Arizona 85051–2517; telephone (602) 242–0210. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at (800) 877–8339 for TTY assistance 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: On June 4, 2015, we published a proposed rule (80 FR 31875) to remove the Hualapai Mexican vole from the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (50 CFR 17.11(h)). We are proposing this action because the available information indicates the original scientific classification is no longer the appropriate determination for the subspecies, meaning that current data indicate that the original classification may be erroneous. We sought information, data, and comments from the public regarding the proposal for 60 days, ending August 3, 2015.

We are reopening the comment period on that proposed rule for an additional 30 days (see **DATES**) while we simultaneously issue a notice in local newspapers. We will accept written comments and information during this reopened comment period. In particular, we seek comments concerning the following:

(1) New information concerning the taxonomic classification and conservation status of Hualapai Mexican voles and Mexican voles in general;

(2) New information on the historical and current status, range, distribution, and population size of Hualapai Mexican voles, including the locations of any additional populations; and

(3) New information regarding the life history, ecology, and habitat use of Hualapai Mexican voles.

Please refer to the proposed rule for more information on our proposed action and the specific information we seek.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. 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. All comments and recommendations, including names and addresses, will become part of the administrative record.

If you submit information via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you mail or hand-deliver a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review, but we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy submissions on *http://www.regulations.gov.*

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 12, 2016.

Marty J. Kodis,

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

[FR Doc. 2016–30816 Filed 12–21–16; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 81, No. 246

Thursday, December 22, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 19, 2016

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 are requested regarding (1) 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; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 23, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Scrapie in Sheep and Goats; Interstate Movement Restrictions and Indemnity Program.

OMB Control Number: 0579–0101.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The Secretary may also prohibit or restrict import or export of any such animal or related material if necessary to prevent spread of any livestock or poultry pest or disease. The AHPA is contained in Title X, Subtitle E, Sections 10401–18 of P.L. 107–171, May 13, 2002, the Farm Security and Rural Investment Act of 2002. Scrapie is a progressive, degenerative, and eventually fatal disease affecting the central nervous system of sheep and goats. Its control is complicated because the disease has an extremely long incubation period without clinical signs of disease, and there is no test for the disease and/or known treatment. The Animal and Plant Health Inspection Service (APHIS) restricts the interstate movement of certain sheep and goats to help prevent the spread of scrapie within the United States. APHIS has regulations at 9 CFR part 54 for an indemnity program to compensate owners of sheep and goats destroyed because of scrapie.

Need and Use of the Information: The regulations necessitate the use of a number of information collection activities including, but not limited to, applications for participation in the Scrapie Flock Certification Program; various plans for infected and source flocks; scrapie test records; application for indemnity payments; certificates; permits; and applications for APHIS-approved eartags, backtags, or tattoos, etc. Without this information, APHIS' efforts to more aggressively prevent the spread of scrapie would be severely hindered.

Description of Respondents: Business or other for-profit; Not for Profit; and State, Local, or Tribal Government;

Number of Respondents: 166,000.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,021,528.

Animal and Plant Health Inspection Service

Title: Importation of Pork-Filled Pasta.

OMB Control Number: 0579–0214.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, and eradicate pests or diseases of livestock or poultry. The Animal and Plant Health Inspection Service (APHIS) is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible.

Swine Vesicular Disease (SVD) is a highly contagious disease that resists both environmental factors and common disinfectants. SVD rarely results I mortality in infected swine and does not cause severe production losses. However, the disease can have a major economic impact since eradication if costly and SVD-free regions often prohibit imports of swine, pork, and pork products from affected regions.

Need and Use of the Information: A certificate must be completed and signed by the issuing official, and contains such information as the origin of the meat used in the product, the name and location of the facility that processed the product, and the product's intended destination. APHIS regulations contain specific requirement for the processing, recordkeeping, and certification procedures for pork-filled pasta products exported to the United States from SVD-affect regions. Without the information, it would significantly cripple APHIS' ability to ensure that pork-filled pasta from certain regions poses a minimal risk of introducing SVD into the United States.

Description of Respondents: Business or other for-profit; and Federal Government.

Number of Respondents: 2.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 5.

Animal and Plant Health Inspection Service

Title: Importation of Shelled Peas from Kenya.

OMB Control Number: 0579–0302.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) fruits and vegetables regulations allows the importation of shelled garden peas from Kenya into the continental United States while continuing to protect against the introduction of quarantined peas.

Need and Use of the Information: APHIS requires that some plants or plant products be accompanied by a phytosanitary inspection certificate that is completed by plant health officials in the originating or transiting country. APHIS uses the information on the certificate to determine the pest condition of the shipment at the time of inspection in the foreign country. This information is used as a guide to the intensity of the inspection APHIS conducts when the shipment arrives. Without the information, all shipments would need to be inspected very thoroughly, thereby requiring considerably more time. This would slow the clearance of international shipments.

Description of Respondents: Business or other for profit; Federal Government.

Number of Respondents: 2.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–30833 Filed 12–21–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0088]

Notice of Request for Extension of Approval of an Information Collection; Permanent, Privately Owned Horse Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for permanent, privately owned horse quarantine facilities.

DATES: We will consider all comments that we receive on or before February 21, 2017.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0088.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0088, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0088* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for permanent, privately owned horse quarantine facilities, contact Dr. Ellen Buck, Equine Import Specialist, National Import Export Services, VS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 851–3361. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Permanent, Privately Owned Horse Quarantine Facilities.

OMB Control Number: 0579–0313.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States based on the regulations in 9 CFR parts 92 through 98.

The regulations in part 93 require, among other things, that certain animals, as a condition of entry, be quarantined upon arrival in the United States. APHIS operates animal quarantine facilities and also authorizes the use of quarantine facilities that are privately owned and operated for certain animal importations.

The regulations in subpart C of part 93 pertain to the importation of horses and include requirements for privately owned quarantine facilities for horses. For permanent, privately owned quarantine facilities, these requirements entail certain information collection activities, including environmental certification, application for facility approval, service agreements, requests to APHIS concerning withdrawal of facility approval, notification to APHIS of facility closure, compliance agreements, security instructions, security breach notification, alarm notification, lists of personnel, signed statements, daily logs and recordkeeping, and requests for variance.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.16 hours per response.

Respondents: Applicants who apply for facility approval; owners and operators of permanent, privately owned horse quarantine facilities; facility employees; authorities who issue and complete environmental certifications; and employees of security companies.

Estimated Annual Number of Respondents: 6.

Estimated Annual Number of Responses per Respondent: 20.5.

Estimated Annual Number of Responses: 123.

Estimated Total Annual Burden on Respondents: 20 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 16th day of December 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–30857 Filed 12–21–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0098]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Veterinary Services National Import Export Services Customer Service Survey Project

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection to evaluate service delivery by the National Import Export Services to the public.

DATES: We will consider all comments that we receive on or before February 21, 2017.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0098.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0098, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0098* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the National Import Export Services customer service survey project, contact Ms. Demille Richardson, Program Analyst, VS, APHIS, NIES, 4700 River Road Unit 40, Riverdale, MD 20737; 301–851–3438. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Veterinary Services National Import Export Services Customer Service Survey Project.

OMB Control Number: 0579–0334.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, among other things, regulates and provides services related to the importation, interstate movement, and exportation of animals, animal products, and other articles to prevent the spread of pests and diseases of livestock. APHIS' Veterinary Services' (VS') National Import Export Services (NIES) is the program unit that carries out these activities to protect animal health.

After performing a service for an individual or business, NIES conducts a survey to evaluate its customer service. The survey consists of a short questionnaire in which respondents are asked to identify the type of customer they are (*e.g.,* pet owners, animal importers/exporters, animal product and byproduct importers/exporters, users of quarantine facilities, and accredited veterinarians), and then to rate the services received in terms of courtesy, timeliness, helpfulness, etc. Respondents are also asked to rate and provide comments concerning their overall experience. Completion of the questionnaire is voluntary and responses do not identify the individual respondent.

NIES uses the survey to gain a general view of the public's perception of NIES customer service at VS service centers, animal import centers, and air and seaports, and identifies areas in which NIES can improve service delivery to the public and more efficiently meet the needs and expectations of customers.

Since the last approval of this collection by the Office of Management and Budget (OMB), we have changed the name from Veterinary Services Customer Service Survey to Veterinary Services National Import Export Services Customer Service Survey Project to more accurately reflect the respondents and the intent of the survey.

We are asking OMB to approve our use of this information collection activity, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0382 hours per response.

Respondents: Members of the public who receive services from Veterinary Services (*e.g.,* pet owners, animal importers/exporters, animal product and byproduct importers/exporters, users of quarantine facilities, and accredited veterinarians).

Estimated annual number of respondents: 15,050.

Estimated annual number of responses per respondent: 1.32.

Estimated annual number of responses: 19,850.

Estimated total annual burden on respondents: 760 hours. (Due to

averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 16th day of December 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–30848 Filed 12–21–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability (NOFA) for the Organic Certification Cost Share Program

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

ACTION: Notice.

SUMMARY: The Farm Service Agency (FSA), on behalf of the Commodity Credit Corporation (CCC), is announcing the availability of $12.5 million per year for fiscal year (FY) 2017 and 2018 under the Organic Certification Cost Share Program (OCCSP) for eligible certified organic and transitional producers and handlers. FSA is announcing the opportunity for States to apply in FY 2017 to administer the OCCSP program for FY 2017. States that establish an agreement for FY 2017 may be given the opportunity to extend their agreement and receive additional funds to administer the program in FY 2018; FSA has not yet determined whether an additional application period will be announced for FY 2018 for State agencies that do not establish an agreement to administer the program for FY 2017. In this document, FSA is providing the requirements for producers and handlers to apply for OCCSP payments, and for State agencies to establish agreements to receive funds in order to provide cost share assistance to eligible producers and handlers.

DATES: *Applications for State Agency Agreements:* FSA will accept applications from States for funds for cost-share assistance between the period of January 3, 2017, and February 17, 2017.

Producer or Handler Applications: FSA county offices will accept applications for OCCSP payments from producers and handlers for FY 2017 starting on March 20, 2017, and ending on October 31, 2017, and for FY 2018, starting on October 1, 2017, and ending on October 31, 2018.

Comments: To comment on the information collection request in the Paperwork Reduction Act Requirement section in this document, we will consider comments we receive by February 21, 2017.

FOR FURTHER INFORMATION CONTACT: Steve Peterson, (202) 720–7641.

SUPPLEMENTARY INFORMATION:

Background

The purpose of OCCSP is to provide cost share assistance to producers and handlers of agricultural products in obtaining certification under the National Organic Program (NOP) established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6524) and the regulations in 7 CFR part 205. The Agricultural Marketing Service (AMS) implemented OCCSP and has been running the program through agreements with State agencies since FY 2008. USDA transferred authority to administer OCCSP from AMS to FSA beginning with FY 2017.

FSA will accept applications from States interested in overseeing reimbursements to their producers, handlers, and processors. All producers and handlers will have access to OCCSP through their local FSA offices. In States where State agencies provide cost share funds, producers and handlers can choose between the State agencies or the local FSA office. In addition to expanding to FSA local offices for FY 2017, OCCSP will now cover costs related to transitional certification and State organic program fees.

In order for a State agency to receive new fund allocations for FY 2017, they must establish a new agreement to administer OCCSP. FY 2017 agreements will include provisions allowing a State agency to request an extension of that new FY 2017 agreement to provide additional funds and allow the State agency to continue to administer the program for FY 2018. FSA has not yet determined whether an additional application period will be announced for FY 2018 for State agencies that choose not to participate in FY 2017; State agencies that would like to administer the program for FY 2018 are encouraged to establish an agreement for FY 2017 to ensure that they will be able to continue to participate. FSA does not anticipate substantive changes to the agreement process with the participating States. Agreements will continue to allow subgrants to other entities.

Certified operations will be subject to the same eligibility criteria and calculation of cost share payments regardless of whether they apply for OCCSP through an FSA local office or a participating State agency. Certified operations may only receive OCCSP payment for the same scope for the same year from one source: either the State agency or FSA. FSA will coordinate with participating State agencies to ensure there are no duplicate payments. If a duplicate payment is inadvertently made, then FSA will inform the participant and require that funds be returned to CCC.

Availability of Funds

Funding for OCCSP is provided through two authorizations: National Organic Certification Cost Share Program (NOCCSP) funds and Agricultural Management Assistance (AMA) funds. Section 10004 of the Agricultural Act of 2014 (the 2014 Farm Bill, Pub. L. 113–79) amended section 10606(d) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 6523(d)), authorizing $11.5 million of CCC funds for NOCCSP for each of FYs 2014 thorough 2018, to remain available until expended. NOCCSP funds will be used for cost share payments to certified operations in the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Marina Islands.

The USDA organic regulations recognize four separate categories, or ''scopes,'' that must be individually inspected for organic certification: crops, livestock, wild crops, and handling (that is, processing). A single operation may be certified under multiple scopes. For example, a certified organic vegetable farm that also has certified organic chickens and produces certified organic jams would be required to be certified for three scopes: crops, livestock, and handling. Beginning in FY 2017, transitional certification and state organic program fees will be eligible for cost share reimbursement and for OCCSP purposes, they will be considered two additional separate scopes. Transitional certification is an optional certification offered by some certifiers for producers and handlers who are in the process of transitioning land to organic production. State organic program fees may be required by States that have established a State organic program according to 7 CFR 205.620–205.622, and are in addition to the costs of organic certification under the four scopes of USDA organic certification.

NOCCSP funds can be used to provide cost share for all four scopes of USDA

organic certification (that is, crops, wild crops, livestock, and handling) and the two additional scopes of transitional certification and State organic program fees.

In addition to the NOCCSP funds, Section 1609 of the 2014 Farm Bill made a minor technical correction to the AMA authorizing language codified at 7 U.S.C. 1524, but did not change the amount authorized, which is $1 million. AMA funds may be used only for cost share payments for organic certification for the three scopes of crops, wild crops, and livestock, and are specifically targeted to the following 16 States:

- Connecticut,
- Delaware,
- Hawaii,
- Maryland,
- Massachusetts,
- Maine,
- Nevada,
- New Hampshire,
- New Jersey,
- New York,
- Pennsylvania,
- Rhode Island,
- Utah,
- Vermont,
- West Virginia, and
- Wyoming.

Sequestration will apply to the total amount of funding available for OCCSP for FYs 2017 and 2018, if required by law.

Cost Share Payments

As required by law (7 U.S.C. 6523(b)), the cost share payments cannot exceed 75 percent of eligible costs incurred, up to a maximum of $750 for each producer or handler. FSA will calculate 75 percent of the allowable costs incurred by an eligible operation, not to exceed a maximum of $750 per certification scope. Cost share assistance will be provided for allowable costs paid by the eligible operation during the same FY for which the OCCSP payment is being requested. Cost share assistance will be provided on a first come, first served basis, until all available funds are obligated for each FY. Applications received after all funds are obligated will not be paid. Allowable costs include:

- Application fees;
- Inspection fees, including travel costs and per diem for organic inspectors;
- USDA organic certification costs, including fees necessary to access international markets with which AMS has equivalency agreements or arrangements;
- Transitional certification costs;
- State organic program fees;
- User fees or sale assessments; and
- Postage.

Unallowable costs include:

- Inspections due to violations of USDA organic regulations, or State organic program or transitional certification program requirements;
- Costs related to non-USDA organic certifications;
- Costs related to any other labeling program;
- Materials, supplies, & equipment;
- Late fees;
- Membership fees; and
- Consultant fees.

Eligible Producers and Handlers

To be eligible for OCCSP payments, a producer or handler must both:

- Possess USDA organic certification or transitional certification at the time of application; and
- Have paid fees or expenses related to its initial certification or renewal of its certification from a certifying agent.

Operations with suspended, revoked, or withdrawn certifications at the time of application are ineligible for cost share reimbursement. OCCSP is open to producers and handlers in the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

How To Submit the Application

State Agencies

State agencies must have an agreement in place to participate in OCCSP. State agencies with funds remaining from an agreement from a previous FY may continue to administer the program with those funds under the terms of their existing agreement. To receive new fund allocations to provide cost share assistance for FY 2017, State agencies must complete an Application for Federal Assistance (Standard Form 424), and enter into a grant agreement with FSA. State agencies must submit the Application for Federal Assistance (Standard Form 424) electronically via *Grants.gov*, the Federal grants Web site, at *http://www.grants.gov.* For information on how to use Grants.Gov, please consult *http://www.grants.gov/GetRegistered.* Grant agreements will be sent by FSA to participating State agencies via express mail. The grant agreement must be signed by an official who has authority to apply for Federal assistance, and must be postmarked no later than February 17, 2017. Upon receipt of complete applications, FSA may begin reviewing the applications and may make awards prior to this deadline. Pending fund availability, applications received after this date may be considered.

Agreements for FY 2017 will include provisions to allow modification of the agreement to also cover a period of performance for FY 2018. At this time, FSA has not determined whether an additional application period will be announced for FY 2018 for State Agencies that do not establish an agreement to administer the program for FY 2017.

Producers and Handlers

Certified operations may apply for OCCSP payments through FSA local offices or through a State agency (or authorized subgrantee) if their State has established an agreement to administer OCCSP. For a producer or handler to apply for OCCSP through FSA, each applicant must submit a complete application, either in person or by mail, to any FSA county office. Additional options for producers or handlers to submit their application may be available at *http://www.fsa.usda.gov/programs-and-services/occsp.* A complete application includes the following documentation:

- Form CCC–884—Organic Certification Cost Share Program, available online at *http://www.fsa.usda.gov/programs-and-services/occsp* or at any FSA county office;
- Proof of USDA organic certification or transitional certification;
- Itemized invoice showing expenses paid to a third-party certifying agency for certification services during the FY in which the application is submitted; and
- AD–2047, if not previously provided.

Producers or handlers may be required to provide additional documentation to FSA if necessary to verify eligibility or issue payment.

FSA's application period begins on March 20, 2017, for FY 2017 and begins on October 1, 2017, for FY 2018, and ends on October 31 of each year or when there is no more available funding, whichever comes first.

Participating State agencies will establish their own application process and deadlines for producers and handlers, as specified in their grant agreements, and eligible operations must submit an application package according to the instructions provided by the State agency. A list of participating States will be available at *http://www.fsa.usda.gov/programs-and-services/occsp.*

Definitions

For this NOFA, new or revised definitions include the following:

Certified operation means a producer or handler that has obtained USDA organic certification or transitional certification.

State Agency means the agency, commission, or department of a State government, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, or the Commonwealth of the Northern Marian Islands, authorized by the State to administer OCCSP.

Transitional certification means a determination made by a certifying agent that a production or handling operation is in compliance with the requirements of a transitional certification program.

USDA organic certification means a determination made by a certifying agent that a production or handling operation is in compliance with Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) and the regulations in 7 CFR part 205, which is documented by a certificate of organic operation.

The following definitions from the regulations of 7 CFR 205.2 also apply to this NOFA: ''certifying agent,'' ''crop,'' ''handler,'' ''inspection,'' ''inspector,'' ''labeling,'' ''livestock,'' ''organic,'' ''organic production,'' ''processing,'' ''producer,'' ''State certifying agent,'' ''State organic program,'' and ''wild crop.''

Participating State Agency Reporting Requirements

Twice a year, each participating State agency must provide FSA with a Federal Financial Report (form SF–425) along with a spreadsheet of Operations Reimbursed, which will list the producers and handlers receiving cost share payments within the reporting period. The semi-annual reports are due to FSA on November 30 and May 30 of each year. Once a year, each participating State agency will need to provide FSA with a narrative report to describe program activities and any subrecipients. The annual reports are due to FSA on November 30 of each year.

Other Provisions

Persons and legal entities who file an application with FSA have the right to an administrative review of any FSA adverse decision with respect to the application under the appeals procedures at 7 CFR parts 780 and 11. FSA program requirements and determinations that are not in response to, or result from, an individual disputable set of facts in an individual participant's application for assistance are not matters that can be appealed.

A producer or handler may file an application with an FSA county office after the OCCSP application deadline, and in such case the application will be considered a request to waive the deadline. The Deputy Administrator has the discretion and authority to consider the case and waive or modify application deadlines and other requirements or program provisions not specified in law, in cases where the Deputy Administrator determines it is equitable to do so and where the Deputy Administrator finds that the lateness or failure to meet such other requirements or program provisions do not adversely affect the operation of OCCSP. Although applicants have a right to a decision on whether they filed applications by the deadline or not, applicants have no right to a decision in response to a request to waive or modify deadlines or program provisions. The Deputy Administrator's refusal to exercise discretion to consider the request will not be considered an adverse decision and is, by itself, not appealable.

Persons and legal entities who make applications with State agencies are subject to review rights afforded by the State agency. Participating State agencies that are dissatisfied with any FSA decision relative to a State agency agreement may seek review for programs governed by Federal contracting laws and regulations, appealable under other rules and to other forums, including to the Department's Board of Contract Appeals under 7 CFR part 24.

Offsets, assignments, and debt settlement regulations specified in 7 CFR 1416.9 apply.

Awards to State agencies will be subject to 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Paperwork Reduction Act Requirements

The information collection request for the OCCSP activity is included in the approval of OMB control number, 0581–0191, and will be moved to FSA. FSA is requesting comments from all interested individuals and organizations on a new information collection request associated with the organic certification cost share program. Producers and handlers will apply for cost share payments, and State Agencies will establish agreements to get funds and to disburse the payments to the qualified producers or handlers.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per responses multiplied by the estimated total annual of responses.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average 1.25 hour per response. The average travel time, which is included in the total burden, is estimated to be 1 hour per respondent.

Type of Respondents: Individuals and States.

Estimated Number of Respondents: 60,336.

Estimated Number of Responses per Respondent: 1.002.

Estimated Total Annual Number of Responses: 60,504.

Estimated Average Time per Responses: 0.995 hours.

Estimated Total Annual Burden on Respondents: 60,232 hours.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Catalog of Federal Domestic Assistance

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this NOFA applies is 10.171, Organic Certification Cost share Program (OCCSP).

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). As previously stated, since FY

2008 USDA implemented OCCSP through AMS via agreements with State Agencies, to make the program more accessible by using FSA county offices as a sign up option for applicants, USDA shifted jurisdiction of the program from AMS to FSA. FSA will now administer and coordinate the program through agreements with interested States and also provide cost share payments directly to eligible producers and handlers for eligible expenses. The general scope of OCCSP, as implemented previously by AMS, is unchanged.

The purpose of OCCSP is to provide cost share assistance to producers and handlers of agricultural products in obtaining USDA organic certification, or transitional certification. FSA's jurisdiction over the program and the minor, discretionary changes to the program (that is, two options for payment receipt and coverage for transitional certifications) are administrative in nature. The discretionary aspects of the program (for example, program eligibility, calculation of cost share payments, etc.) were effectively designed by AMS and are not proposed to be substantively changed herein. As such, the Categorical Exclusions in 7 CFR part 799.31 apply, specifically 7 CFR 799.31(b)(6)(c) (that is, financial assistance to supplement income). No Extraordinary Circumstances (7 CFR 799.33) exist. As such, FSA has determined that this NOFA does not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Val Dolcini,

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

[FR Doc. 2016–30772 Filed 12–21–16; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Nominations Open for the Vacancies on the National Advisory Council on Maternal, Infant and Fetal Nutrition

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Nominations open for the vacancies on the National Advisory Council on Maternal, Infant and Fetal Nutrition.

SUMMARY: FNS is seeking nominations for 9 vacancies on the National Advisory Council on Maternal, Infant and Fetal Nutrition (Council). The Council is composed of 24 members. Members of the Council from outside USDA and the U.S. Department of Health and Human Services (HHS) are appointed for 3-year terms. State and local officials may serve only during their official tenure. Parent participants are appointed for 2-year terms. Members appointed from USDA and HHS serve at the pleasure of their respective Secretaries.

The Council studies the operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and related programs such as the Commodity Supplemental Food Program (CSFP). Categories of membership are specified by law. To ensure a balance of differing views, Council members are drawn from Federal, State and local governments, industry, and organizations with a common interest in the management of WIC and CSFP, including parent participants in both programs. The vacant positions include:

State CSFP Director

The individual responsible for administering the CSFP at the State level. Has operational knowledge about all aspects of CSFP management.

State WIC Program Fiscal Director

The individual responsible for the administration and monitoring of WIC grants at the State and local levels. This includes monitoring compliance of State and local budgets and expenditures with fiscal policies and procedures

Local WIC Program Project Director in an Urban Area

The individual responsible for implementing Federal and State policy guidelines and administering the WIC Program at the local level in an urban area. Has operational knowledge about all aspects of the WIC Program, including policy, grants management, accounting systems, and computer systems.

Local CSFP Project Director

The individual responsible for administering the CSFP at the local level. Has operational knowledge about all aspects of CSFP management.

CSFP Parent Participant

A pregnant, postpartum or breastfeeding woman, or the parent/guardian of an infant and/or child participating in CSFP.

Pediatrician

A physician specializing in the development, care and diseases of children.

Obstetrician

A physician specializing in obstetrics, *i.e.,* the care of women during and after pregnancy.

Expert in Alcohol Education and Prevention

An individual experienced in alcohol abuse education and prevention, especially in the areas of screening, counseling and referring for treatment of pregnant and postpartum women.

Expert in Breastfeeding Promotion

An individual who has education and training in the skills and techniques of breastfeeding.

Section 17(k) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786), mandates the Council and authorizes the Secretary of Agriculture to appoint its members. The White House Liaison Office is responsible for vetting every candidate who applies for membership to the Council. In order to be appointed by the Secretary of Agriculture to serve on a board, council or committee, each applicant must clear all stages of the vetting process. Vetting is a comprehensive personal and professional background investigation that specifically includes, but is not limited to, an analysis of each candidate's criminal history, bankruptcy filings, liens and judgments, affiliations and associations, lobbyist status, and prior involvement with USDA.

This process is used to ensure that the finest candidates are selected to represent the interests of the United States Department of Agriculture. Individuals and organizations who wish to nominate experts for this or any other USDA advisory committee should submit a letter to the Secretary listing these individuals' names and business address, phone, and email contact information. These individuals may be contacted now or in the future to determine their interest in serving as a committee member.

Candidates who wish to be considered for membership on the Council should submit a USDA ''Application for Advisory Committee Membership'' (Form AD–755) application form and resume to the Secretary of Agriculture. Cover letters should be addressed to the Secretary of Agriculture. All nomination materials should be mailed in a single, complete package and postmarked by January 23, 2017 to: Thomas Vilsack, Secretary, U.S. Department of Agriculture, 1400

Independence Avenue SW., Washington, DC, 20250 at the attention of Robin Young, DFO, USDA/FNS/SFPD. The application form and more information about advisory committees can be found at *http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=advisory_committees.xml.*

FNS has special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on these advisory committees. We encourage and welcome nominations for qualified candidates.

Dated: December 15, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–30849 Filed 12–21–16; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Telephonic Business Meeting.

DATES: Wednesday, December 28, 2016, at 1:00 p.m. EST.

ADDRESSES: *Meeting to take place by telephone.*

FOR FURTHER INFORMATION CONTACT: Brian Walch, Director of Communications and Public Engagement, at (202) 376–8371 or *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This business meeting is open to the public, by telephone only.

Participant Access Instructions: Dial in 5–10 minutes prior to the start time using the Participant phone number and Conference Passcode below.

Conference ID: 8072815.

Listen Only, Toll Free: 1–888–809–5987.

Persons with hearing impairments, please contact the above for how to access the Federal Relay Service for the meeting.

Meeting Agenda

I. Approval of Agenda

II. Vote on Chair

- Vote on President Obama's nomination of Catherine E. Lhamon to serve as Chair of the United States Commission on Civil Rights

III. Other Business

IV. Adjourn Meeting

Dated: December 20, 2016.

Brian Walch,

Director of Public Affairs, U.S. Commission on Civil Rights.

[FR Doc. 2016–30954 Filed 12–20–16; 11:15 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maryland Advisory Committee; Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; correction.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** of September 22, 2016, concerning a meeting of the Maryland Advisory Committee. The notice is revised to provide further details about specific meeting dates.

FOR FURTHER INFORMATION CONTACT: Barbara de La Viez, (202) 376–7533.

Correction

In the **Federal Register** of Maryland, in FR Doc. 2016–22851, on page 65335–65336, correct the first paragraph to read:

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Maryland Advisory Committee to the Commission will convene by conference call at 12:30 p.m. (EST) on Friday, January 13, 2017. The purpose of the planning meeting is to vote on a project proposal for the Committee to study the civil rights issues related to bail bonds and municipal fines in Maryland and discuss future project planning.

Dated: December 16, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Coordination Unit.

[FR Doc. 2016–30810 Filed 12–21–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules (''solar cells''), from the People's Republic of China (''PRC''). The period of review (''POR'') is December 1, 2014 through November 30, 2015. The administrative review covers two mandatory respondents: (1) Canadian Solar International Limited, which we have preliminarily treated as a single entity with five affiliated companies identified below, and (2) the collapsed entity Trina Solar, consisting of Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd., which we have preliminarily continued to treat as a single entity with five additional affiliated companies identified below. The Department preliminarily finds that both mandatory respondents sold subject merchandise in the United States at prices below normal value (''NV'') during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Effective December 22, 2016.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the order is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.[1] Merchandise

[1] For a complete description of the scope of the order, *see* ''Decision Memorandum for Preliminary

covered by this order is classifiable under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Preliminary Determination of No Shipments

Based on an analysis of U.S. Customs and Border Protection (''CBP'') information, and comments provided by a number of companies, the Department preliminarily determines that seven companies under review, BYD (Shangluo) Industrial Co., Ltd., Canadian Solar Inc., Dongguan Sunworth Solar Energy Co., Ltd., Hangzhou Sunny Energy Science and Technology Co., Ltd., Jiangsu High Hope Int'l Group, Wuxi Suntech Power Co., Ltd/Luoyang Suntech Power Co., Ltd., and Zhongli Talesun Solar Co. Ltd. each had no shipments during the POR. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Consistent with an announced refinement to its assessment practice in non-market economy (''NME'') cases, the Department is not rescinding this review, in part, but intends to complete the review with respect to the companies for which it has preliminarily found no shipments and issue appropriate instructions to CBP based on the final results of the review.[2]

Preliminary Affiliation and Single Entity Determination

Based on record evidence, the Department preliminarily finds that Canadian Solar International Limited and the following five companies are affiliated pursuant to section 771(33)(F) of the Tariff Act of 1930, as amended (''the Act''), and should be treated as a single entity pursuant to 19 CFR 351.401(f)(1)–(2): Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang), Inc., CSI Cells Co., Ltd., CSI–GCL Solar Manufacturing (YanCheng) Co., Ltd., and CSI Solar Power (China) Inc. (collectively, together with Canadian Solar International Limited, ''Canadian Solar''). For additional information, *see* Preliminary Decision Memorandum at the section entitled ''Single Entity Treatment'' and the Canadian Solar Collapsing Memorandum.[3]

Furthermore, the Department preliminarily continues to find that Trina Solar, Yancheng Trina Solar Energy Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., and Hubei Trina Solar Energy Co., Ltd. (collectively, ''Trina'') are affiliated pursuant to section 771(33)(F) of the Act and should be treated as a single entity pursuant to 19 CFR 351.401(f)(1)–(2). This preliminary finding is based on record evidence showing that the facts and analysis that the Department relied upon in the 2013–2014 AD administrative review of solar cells from the PRC continue to be applicable during the instant POR. For additional information, *see* the Preliminary Decision Memorandum at the section entitled ''Single Entity Treatment.''

Use of Partial Facts Available (''FA'') and Partial Adverse Facts Available (''AFA'')

Certain unaffiliated tollers of inputs used by Canadian Solar and Trina to product subject merchandise and unaffiliated suppliers of solar cells and/or solar modules to both respondents failed to provide FOP data. The Department preliminarily determines that it is appropriate to apply AFA, pursuant to section 776(b) of the Act, with respect to the unreported FOPs for purchased solar cells and solar modules. These unreported FOPs for solar cells and solar modules represent a material amount of necessary FOP information. However, in accordance with section 776(a)(1) of the Act, the Department is applying FA with respect to the unreported FOPs from the unaffiliated tollers. The record indicates that the tolled portions either represent relatively small percentages of the inputs consumed or the tollers only performed a relatively small portion of the total processing involved in producing the input. For details regarding these determinations, see the memoranda regarding unreported FOPs.

Separate Rates

The Department preliminarily determines that the information placed on the record by Canadian Solar and Trina, as well as by the other companies listed in the rate table in the ''Preliminary Results of Review'' section below, demonstrates that these companies are entitled to separate rate status. The Department calculated weighted-average dumping margins for Canadian Solar and Trina and calculated an all-others rate for the companies to which it granted separate rates status, but which it did not individually examine, as described in the Separate Rate Calculation Memorandum[4] and the Preliminary Decision Memorandum.

On the other hand, the Department preliminarily determines that the following companies have not demonstrated their entitlement to separate rates status because either they did not file a separate rate application or certification with the Department:

1. Jiangsu Sunlink PV Technology Co., Ltd.
2. Ningbo Hisheen Electrical Co., Ltd.
3. Shenzhen Glory Industries Co., Ltd.

The Department treated the companies which it did not grant separate rates status as part of the PRC-wide entity. Because no party requested a review of the PRC-wide entity, the entity is not under review and the entity's rate (*i.e.,* 238.95 percent) is not subject to change.[5] For additional information regarding the Department's separate rates determinations, see the Preliminary Decision Memorandum.

Methodology

The Department conducted this review in accordance with section 751(a)(1)(B) of the Act. The Department preliminarily determined that both respondents' reported U.S. sales were constructed export price (''CEP'') sales and calculated CEPs in accordance with

Results of the 2014–2015 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, From the People's Republic of China'' from Edward Yang, Senior Director, Office VII, Antidumping and Countervailing Operations, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, issued concurrently with and hereby adopted by this notice (''Preliminary Decision Memorandum'').

[2] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) and the ''Assessment Rates'' section, below.

[3] *See* the December 16, 2016 memorandum from Jeff Pedersen, International Trade Analyst, AD/CVD Operations Office IV to Abdelali Elouaradia, Director, AD/CVD Operations Office IV regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Affiliation and Single Entity Memorandum for Canadian Solar International Limited (''Canadian Solar Single Entity Memorandum'').

[4] *See* the memorandum from Jeff Pedersen International Trade Analyst, AD/CVD Operations, Office IV to Howard Smith Program Manager, AD/CVD Operations, Office IV entitled ''2014–2015 Administrative Review of the Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People's Republic of China: Calculation of the Dumping Margin for Respondents Not Selected for Individual Examination,'' dated concurrently with this notice.

[5] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments;* 2013– 2014, 81 FR 39905, 39908 (June 20, 2016) (''*AR2 Final Results*'').

section 772 of the Act. Given that the PRC is an NME country, within the meaning of section 771(18) of the Act, the Department calculated NV in accordance with section 773(c) of the Act.

For a full description of the methodology underlying the preliminary results of this review, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist for the POR:

Exporter	Weighted-average dumping margin (percent)
Canadian Solar International Limited/Canadian Solar Manufacturing (Changshu), Inc./Canadian Solar Manufacturing (Luoyang)Inc./CSI Cells Co., Ltd./CSI–GCL Solar Manufacturing (YanCheng) Co., Ltd./CSI Solar Power (China) Inc	30.42
Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science and Technology Co., Ltd./Yancheng Trina Solar Energy Technology Co., Ltd./Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd	7.72
Chint Solar (Zhejiang) Co., Ltd	13.97
ERA Solar Co., Ltd	13.97
ET Solar Energy Limited	13.97
Hengdian Group DMEGC Magnetics Co., Ltd	13.97
JA Solar Technology Yangzhou Co., Ltd	13.97
Jiawei Solarchina (Shenzhen) Co., Ltd	13.97
Jiawei Solarchina Co., Ltd	13.97
JingAo Solar Co., Ltd	13.97
Lightway Green New Energy Co., Ltd	13.97
Ningbo ETDZ Holdings, Ltd	13.97
Risen Energy Co., Ltd	13.97
Shanghai BYD Co., Ltd	13.97
Shanghai JA Solar Technology Co., Ltd	13.97
Shenzhen Sungold Solar Co., Ltd	13.97
Shenzhen Topray Solar Co., Ltd	13.97
Star Power International Limited	13.97
Systemes Versilis, Inc	13.97
Taizhou BD Trade Co., Ltd	13.97
tenKsolar (Shanghai) Co., Ltd	13.97
Toenergy Technology Hangzhou Co., Ltd	13.97
Wuxi Tianran Photovoltaic Co., Ltd	13.97
Yingli Energy (China) Company Limited/Baoding Tianwei Yingli New Energy Resources Co., Ltd./Tianjin Yingli New Energy Resources Co., Ltd./Hengshui Yingli New Energy Resources Co., Ltd./Lixian Yingli New Energy Resources Co., Ltd./Baoding Jiasheng Photovoltaic Technology Co., Ltd./Beijing Tianneng Yingli New Energy Resources Co., Ltd./Hainan Yingli New Energy Resources Co., Ltd./Shenzhen Yingli New Energy Resources Co., Ltd	13.97
Zhejiang Era Solar Technology Co., Ltd	13.97
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company	13.97

Disclosure and Public Comment

The Department intends to disclose to parties the calculations performed for these preliminary results of review within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[6] Rebuttal briefs may be filed no later than five days after case briefs are due and may respond only to arguments raised in the case briefs.[7] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. The summary should be limited to five pages total, including footnotes.[8]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.[9] Requests should contain the party's name, address, and telephone number, the number of participants in, and a list of the issues to be discussed at, the hearing. Oral arguments at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined.[10] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date of the hearing.

All submissions, with limited exceptions, must be filed electronically using ACCESS.[11] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by

[6] *See* 19 CFR 351.309(c)(ii).

[7] *See* 19 CFR 351.309(d).

[8] *See* 19 CFR 351.309(c)(2), (d)(2).

[9] *See* 19 CFR 351.310(c).

[10] *See* 19 CFR 351.310(d).

[11] *See generally* 19 CFR 351.303.

5 p.m. Eastern Time (''ET'') on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.[12]

Unless otherwise extended, the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[13] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For each individually examined respondent in this review whose weighted-average dumping margin in the final results of review is not zero or *de minimis* (*i.e.,* less than 0.5 percent), the Department intends to calculate importer-specific assessment rates, in accordance with 19 CFR 351.212(b)(1).[14] Where the respondent reported reliable entered values, the Department intends to calculate importer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer and dividing this amount by the total entered value of the sales to the importer.[15] Where the importer did not report entered values, the Department intends to calculate an importer-specific assessment rate by dividing the amount of dumping for reviewed sales to the importer by the total sales quantity associated with those transactions. In addition, the Department will calculate an estimated *ad valorem* importer-specific assessment rate to determine whether this rate is *de minimis,* however, the Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates, where appropriate.[16] Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,* the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[17]

Pursuant to Departmental practice, for entries that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, the Department will instruct CBP to liquidate such entries at the rate for the PRC-wide entity.[18] Additionally, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's CBP case number will be liquidated at the rate for the PRC-wide entity.

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on POR entries and for future deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The Department will instruct CBP to require a cash deposit for antidumping duties equal to the weighted-average amount by which NV exceeds U.S. price. The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is *de minimis* (*i.e.,* less than 0.5 percent), then the cash deposit rate will be zero for that exporter); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity (*i.e.,* 238.95 percent[19]) and (4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties and/or countervailing duties has occurred, and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: December 16, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Preliminary Determination of No Shipments
5. Selection of Respondents
6. Single Entity Treatment
7. Discussion of the Methodology
   a. NME Country
   b. Separate Rates
   c. Application of Partial FA and AFA
   d. Surrogate Country
   e. Date of Sale
   f. Fair Value Comparisons
   g. U.S. Price
   h. Normal Value
   i. Section 777A(f) of the Act
   j. Currency Conversion
8. Conclusion

[FR Doc. 2016–30854 Filed 12–21–16; 8:45 am]

BILLING CODE 3510–DS–P

[12] *See* 19 CFR 351.303 (for general filing requirements); *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[13] *See* 19 CFR 351.212(b)(1).

[14] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (''*Final Modification*'').

[15] *See* 19 CFR 351.212(b)(1).

[16] *Id.*

[17] *See Final Modification,* 77 FR at 8103.

[18] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

[19] *See AR2 Final Results,* 81 FR 39908.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–857]

Certain Softwood Lumber Products from Canada: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective December 15, 2016.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen at (202) 482–2769 or Robert Galantucci at (202) 482–2923, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On November 25, 2016, the Department of Commerce (the Department) received an antidumping duty (AD) petition concerning imports of certain softwood lumber products (softwood lumber) from Canada, filed in proper form, on behalf of the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (COALITION) (hereinafter, Petitioner).[1]

On November 30, 2016, the Department requested additional information and clarification of certain areas of the Petition.[2] Petitioner filed responses to these requests on December 1, 2016.[3] On December 7, 2016, in consultations the Department held with respect to the companion CVD case on imports of softwood lumber from Canada, the Government of Canada (GOC) provided comments on, and requested the Department poll the industry to determine, industry support.[4] On December 8, 2016, Petitioner provided a response to the GOC comments on industry support.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that imports of softwood lumber from Canada are being, or are likely to be, sold in the United States at less-than-fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, Petitioner states that the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed this Petition on behalf of the domestic industry because Petitioner is an interested party as defined in section 771(9)(F) of the Act. As discussed in the ''Determination of Industry Support for the Petition section, below, the Department also finds that Petitioner demonstrated sufficient industry support with respect to initiation of the requested AD investigation.[6]

Period of Investigation

Because the Petition was filed on November 25, 2016, the period of investigation (POI) is, pursuant to 19 CFR 351.204(b)(1), October 1, 2015, through September 30, 2016.

Scope of the Investigation

The product covered by this investigation is certain softwood lumber products from Canada. For a full description of the scope of this investigation, *see* the Appendix to of this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, Petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[7] As a result of these exchanges, the scope of the Petition was modified to clarify the description of merchandise covered by the Petition. The class or kind of merchandise covered by this initiation, as described in the Appendix to this notice, reflects that clarification.

As discussed in the preamble to the Department's regulations,[8] we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determinations in this investigation and the companion countervailing duty investigation concurrently being initiated. If scope comments include factual information,[9] all such factual information should be limited to public information. The Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Standard Time (EST) on January 4, 2017, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information (and also should be limited to public information), must be filed by 5:00 p.m. EST on Tuesday, January 17, 2017, which is the first business day ten calendar days after the initial comments deadline.[10]

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments and information must be filed on the records of the AD investigation and the concurrent CVD investigation.

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[1] *See* Letter from Petitioner, ''Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada,'' November 25, 2016 (the Petition), at Volume II. The COALITION is an ad hoc association whose members are: Collum's Lumber Products, L.L.C., Hankins, Inc., Potlatch Corporation, Rex Lumber Company, Seneca Sawmill Company, Sierra Pacific Industries, Stimson Lumber Company, Swanson Group, Weyerhaeuser Company, Carpenters Industrial Council, Giustina Land and Timber Company, Sullivan Forestry Consultants, Inc., and the U.S. Lumber Coalition, Inc. *Id.,* Volume I at 2.

[2] *See* Letter from the Department to Petitioner concerning general issues entitled ''Petition for the Imposition of Antidumping Duties on Imports of Certain Softwood Lumber Products from Canada: Supplemental Questions,'' dated November 30, 2016 (General Issues Supplemental Questionnaire); *see also* Letter from the Department to Petitioner concerning antidumping matters entitled ''Petition for the Imposition of Antidumping Duties on Imports of Certain Softwood Lumber Products from Canada: Supplemental Questions,'' dated November 30, 2016 (Antidumping Supplemental Questionnaire).

[3] *See* Letter from Petitioner to the Department entitled ''Supplement to the Petition for the Imposition of Antidumping Duties on Imports of Certain Softwood Lumber Products from Canada: Response to the Department's Supplemental Questions,'' dated December 1, 2016 (Petition Supplement).

[4] *See* Memorandum from Robert Galantucci to the file entitled ''Petition for the Imposition of Antidumping Duties on Imports of Certain Softwood Lumber Products from Canada: Consultation Documents,'' dated December 13, 2016 (Consultation Document Memorandum), at Attachment 1 (Letter from the Government of Canada to the Department entitled, ''Certain Softwood Lumber from Canada: Submission of Consultations Paper,'' dated December 7, 2016).

[5] *See* Consultation Document Memorandum, at Attachment 2 (Letter from Petitioner to the Department entitled, ''Comments on Government of Canada's Consultations Paper,'' dated December 8, 2016); *see also* Consultation Document Memorandum, at Attachment 3 (Memorandum to the File Re: Consultations with Officials from the Government of Canada, dated December 7, 2016, which references the GOC comments.).

[6] *See* the ''Determination of Industry Support for the Petition'' section below.

[7] *See* General Issues Supplemental Questionnaire and Petition Supplement.

[8] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 2007).

[9] *See* 19 CFR 351.102(b)(21).

[10] *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.'')

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[11] An electronically filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

The Department is giving interested parties an opportunity to provide comments on the appropriate physical characteristics of softwood lumber to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe softwood lumber, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. EST on January 18, 2017. Any rebuttal comments, which may include factual information (and should be limited to public information), must be filed by 5:00 p.m. EST on January 30, 2017, which is the first business day 10 calendar days after the initial comments deadline.[12] All comments and submissions to the Department must be filed electronically using ACCESS, as explained above.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[13] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[14]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of this investigation. Based on our analysis of the information submitted on the record, we have determined that softwood lumber constitutes a single domestic like product and we analyzed industry support in terms of that domestic like product.[15]

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix to this notice. To establish industry support, Petitioner provided actual 2015 production data of the domestic like product for all U.S. softwood lumber producers that support the Petition.[16] Petitioner also estimated the 2015 softwood lumber production of those U.S. softwood lumber producers/sawmills whose workers are represented

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[12] *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.'').

[13] *See* section 771(10) of the Act.

[14] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[15] For a discussion of the domestic like product analysis in this investigation, *see* Antidumping Duty Investigation Initiation Checklist: Certain Softwood Lumber Products from Canada (Canada AD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Softwood Lumber Products (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit (CRU), Room B8024 of the main Department of Commerce building.

[16] *See* Petition, Volume I, at 6–7 and Exhibit 10; *see also* Petition Supplement, at 8–9 and Exhibit 10.

by the Carpenters Industrial Council, a recognized union and a member of the COALITION.[17] Petitioner estimated total 2015 production of the domestic like product for the entire domestic industry based on production data published by *Lumber Track,* adjusted to account for any flooring and siding produced outside sawmills that may have not been included in the published production data.[18] Petitioner compared the total production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.[19] We relied upon data Petitioner provided for purposes of measuring industry support.[20]

On December 7, 2016, we received comments on industry support from the GOC.[21] Petitioner responded to the GOC's Comments on December 8, 2016.[22] For further discussion of these comments, *see* the Canada AD Initiation Checklist, at Attachment II.

Our review of the data provided in the Petition, Petition Supplement, letters from the GOC and Petitioner, and other information readily available to the Department indicates that Petitioner has established industry support.[23] First, the Petition established support from domestic producers and workers accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[24] Second, the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers and workers who support the Petition account for at least 25 percent of the total production of the domestic like product.[25] Finally, the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers and workers who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[26] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(F) of the Act and it has demonstrated sufficient industry support with respect to the AD investigation that it is requesting the Department initiate.[27]

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[28]

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; lost sales and revenues; mill closures and layoffs; and adverse impact on the domestic industry's key trade and financial indicators, including financial performance, production, and capacity utilization.[29] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[30]

Allegations of Sales at Less-Than-Fair Value

The following is a description of the allegations of sales at less-than-fair value upon which the Department based its decision to initiate an investigation of imports of softwood lumber from Canada. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the initiation checklist, issued concurrently with this notice.[31]

Export Price

Petitioner based U.S. price on five quoted sales offers to customers in the United States for Spruce Pine Fir (SPF) softwood lumber and kiln-dried Douglas Fir (DF) softwood lumber produced in, and exported from, Canada.[32] Petitioner made deductions from U.S. price for movement expenses consistent with the delivery terms.[33] Petitioner also deducted from U.S. price domestic brokerage and handling expenses and early payment discount expenses.[34]

NV Based on Home Market Sales

Petitioner provided home market price information based on a price quote for SPF lumber produced in, and offered for sale in, Canada.[35] Petitioner stated that the home market price quote was for SPF lumber identical to the SPF lumber in U.S. Offers 1 and 2.[36] Petitioner made deductions from the home market price for inland freight charges and payment discounts.[37]

NV Based on Constructed Value

For U.S. price Offers 3, 4, and 5, Petitioner was unable to obtain information regarding home market prices and, therefore, calculated NV based on constructed value (CV).[38] Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM), selling, general and administrative (SG&A) expenses, financial expenses, packing expenses, and profit. Petitioner calculated COM based on publicly available sources containing detailed region or province-

[17] *See id.* at 6–9 and Exhibits 10 and 14.

[18] *Id.,* at 4–6 and Exhibits 2 and 56.

[19] *See id.* at 4–10 and Exhibit 10; *see also* Petition Supplement, at 8–9 and Exhibit 10.

[20] *See* Canada AD Initiation Checklist, at Attachment II.

[21] *See* Consultation Document Memorandum, at Attachment 1; *see also* Consultation Document Memorandum, at Attachment 3.

[22] *See* Consultation Document Memorandum, at Attachment 1.

[23] *See* Canada AD Initiation Checklist, at Attachment II.

[24] *See* section 732(c)(4)(D) of the Act; *see also* Canada AD Initiation Checklist, at Attachment II.

[25] *See* Canada AD Initiation Checklist, at Attachment II.

[26] *Id.*

[27] *Id.*

[28] *See* Petition, Volume I, at 34 and Exhibit 27.

[29] *Id.,* at 28–30, 34–67 and Exhibits 2, 3, 19, 24, 26–27, 29, 32, 34, 36–53, and 59–60; *see also* Petition Supplement, at 9 and Exhibit 59.

[30] *See* Canada AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Softwood Lumber Products from Canada (Attachment III).

[31] *See generally* Canada AD Initiation Checklist.

[32] *See* Canada AD Initiation Checklist; *see also* Petition, Volume II, at 2–12 and Exhibit 72.

[33] *See* Canada AD Initiation Checklist; *see also* Petition, Volume II, at 6–12 and Exhibits 72, 73, and 75.

[34] *See* Canada AD Initiation Checklist; *see also* Petition, Volume II, at 6–7, 10–12 and Exhibits 72, 73, and 76.

[35] *See* Canada AD Initiation Checklist at 9; *see also* Petition, Volume II, at 12 and Exhibit 77; General Issues Supplement, at Exhibit 77.

[36] *See* Canada AD Initiation Checklist; *see also* Petition, Volume II, at 12–13.

[37] *See* Canada AD Initiation Checklist at 9; *see also* Petition, Volume II, at 13–14 and Exhibits 73 and 77; General Issues Supplement, at Exhibit 77.

[38] *See* Canada AD Initiation Checklist at 10–13; *see also* Petition, Volume II, at 15–16. In accordance with section 505(a) of the Trade Preferences Extension Act of 2015, amending section 773(b)(2) of the Act, for all of the investigations, the Department will request information necessary to calculate the cost of production (COP) and CV to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. The Department will no longer require a COP allegation to conduct this analysis.

specific log and sawmill production costs.[39] Specifically, Petitioner relied on the information reported in the Wood Markets' *Cost Benchmark Report* and *Quarterly Update* publications, adjusted for contemporaneity and to reflect more specific product costs where information was publicly available, as well as information published by provincial offices in Canada.[40] To determine the SG&A, and financial expense rates, Petitioner relied on the audited financial statements of a Canadian lumber producer.[41] Petitioner also relied on the audited financial statements of the same producer that was used for calculating the SG&A, and financial expenses to calculate the profit rate.[42]

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of softwood lumber from Canada, are being, or are likely to be, sold in the United States at less-than-fair value. Based on comparisons of EP to NV in accordance with sections 773(a) and (e) of the Act, the estimated dumping margins for softwood lumber range from 20.12 percent to 53.08 percent.[43]

Initiation of Less-than-Fair-Value Investigation

Based upon the examination of the AD Petition on softwood lumber from Canada, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of softwood lumber for Canada are being, or are likely to be, sold in the United States at less-than-fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the Act.[44] The TPEA does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission (ITC).[45] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this AD investigation.[46]

Critical Circumstances

Petitioner alleges, based on trade statistics and documented prior knowledge of an impending trade case, that there is a reasonable basis to believe or suspect that critical circumstances exist with regard to imports of softwood lumber from Canada.[47]

Section 733(e)(1) of the Act states that if a petitioner alleges critical circumstances, the Department will find that such circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect that under, subparagraph (A)(i), there is a history of dumping and there is material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) 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) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(2) of the Department's regulations provides that, generally, imports must increase by at least 15 percent during the ''relatively short period'' to be considered ''massive'' and section 351.206(i) 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)[48] and ending at least three months later. The regulations also provide, however, that if the Department ''finds that importers, or exporters and 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.''[49]

Petitioner alleges that there is a history of dumping and material injury by reason of dumped imports of softwood lumber, and that U.S. importers knew or should have known that softwood lumber was being sold at less-than-fair value and that there was likely to be material injury by reason of such sales.[50] Petitioner notes that, in a previous investigation, the Department made a final affirmative antidumping determination on softwood lumber imports from Canada.[51] Additionally, in the final results of two administrative reviews of the resulting order on softwood lumber, and in the preliminary results of a third review, the Department found that softwood lumber from Canada continued to be sold for less-than-fair value.[52]

Petitioner also asserts that there have been massive imports of softwood lumber over a relatively short period. Petitioner contends that, pursuant to 19 CFR 351.206(i), the Department should evaluate the level of imports during a period prior to the filing of the Petition, because importers and foreign exporters and producers had reason to believe that an antidumping duty petition was likely.[53] In particular, Petitioner provided news articles and industry publications to demonstrate that importers and foreign exporters and producers were aware that the Softwood Lumber Agreement (SLA) expired on October 12, 2015, and that after October 12, 2016, the domestic industry in the United States would once again be permitted to file an AD petition.[54] Accordingly, Petitioner asserts that importers and foreign exporters and producers were aware that they had a one-year period following the expiration of the SLA to ship subject merchandise without being subject to antidumping duties.[55] Therefore, to consider whether imports of softwood lumber were massive over a relatively short period of time, Petitioner contends that the Department should compare import levels during January 2015 through October 2015 (base period) with import levels during November 2015 through

[39] *See* Canada AD Initiation Checklist; *see also* Petition, Volume II, at 17–19.

[40] *See* Petition, Volume II, at 17–34 and Exhibits 69, 78, 82, 85, 87, 94, and 95.

[41] *See* Canada AD Initiation Checklist at 11.

[42] *Id.*

[43] *See* Petition Supplement at 10; *see also* Revised Exhibit 73; Canada AD Initiation Checklist at 15.

[44] *See* Trade Preferences Extension Act of 2015, Pub. L. 114–27, 129 Stat. 362 (2015).

[45] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

[46] *Id.,* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[47] *See* Petition, Volume I, at 67–78.

[48] *See* 19 CFR 351.102(b)(40) (providing that a proceeding begins on the date of the filing of a petition).

[49] *See id.*

[50] *Id.* at 67–78.

[51] *Id.* at 76.

[52] *Id.*

[53] *Id.* at 69–70.

[54] *Id.* at 70–72 and Exhibits 39, 64, 65, 67. Petitioner notes that there was a one-year ''standstill'' period during which domestic industry was not permitted to file an AD petition. *Id.* at 70–72.

[55] *Id.* at 72–73.

August 2016 (comparison period).[56] Based on Petitioner's calculation, the import volume of softwood lumber surged 25.56 percent between the base and comparison period, and the value of imports surged 18.11 percent.[57] Petitioner asserts that because the surge in imports constituted more than a 15 percent change, import volumes of softwood lumber are massive, as defined in the Department's regulations.

Petitioner requests that the Department make a preliminary finding of critical circumstances within 45 days of the filing of the Petition.[58] Section 732(e) of the Act states that when there is a reasonable basis to believe or suspect (1) there is a history of dumping in the United States or elsewhere of the subject merchandise, or (2) 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-fair value, the Department may request Customs and Border Protection (CBP) to compile information on an expedited basis regarding entries of the subject merchandise.

Taking into consideration the foregoing, we will analyze this matter further. We will monitor imports of softwood lumber from Canada and may request that CBP compile information on an expedited basis regarding entries of subject merchandise.[59] If, at any time, the criteria for a finding of critical circumstances are established, we will issue a critical circumstances determination at the earliest possible date.[60]

Respondent Selection

Based on information reasonably available to it, Petitioner identified over 400 companies in Canada as producers/exporters of softwood lumber.[61] Following standard practice in AD investigations involving market economy countries, in the event the Department determines that the number of companies is large and it cannot individually examine each company based upon the Department's resources, where appropriate, the Department intends to select mandatory respondents based on CBP data for U.S. imports of softwood lumber from Canada during the period of investigation under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the ''Scope of the Investigation,'' in the Appendix. The Department also intends to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO on the record within five business days of publication of this **Federal Register** notice. Interested parties wishing to comment regarding the CBP data must do so within seven calendar days after the placement of the CBP data on the record of this investigation. Parties wishing to submit rebuttal comments should submit those comments five calendar days after the deadline for the initial comments.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at *http://enforcement.trade.gov/apo.*

Comments for this investigation must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. EST, by the dates noted above. We intend to finalize our decision regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the GOC via ACCESS. Because of the particularly large number of producers/exporters identified in the Petition,[62] the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of softwood lumber from Canada are materially injuring or threatening material injury to a U.S. industry.[63] A negative ITC determination will result in the investigation being terminated;[64] otherwise, the investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Specific time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties should review the regulations prior to submitting factual information in the investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under Part 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under Part 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

[56] *Id.* at 73–74.

[57] *Id.*

[58] *Id.* at 69.

[59] *See* Section 732(e) of the Act.

[60] *See* Policy Bulletin 98/4, 63 FR 55364 (October 15, 1998).

[61] *See* Petition, Volume I, at 28 and Exhibit 61.

[62] *See* Petition, Volume I, at Exhibit 61.

[63] *See* section 733(a) of the Act.

[64] *Id.*

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[65] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[66] The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c).

Dated: December 15, 2016.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is softwood lumber, siding, flooring and certain other coniferous wood (''softwood lumber products''). The scope includes:

- Coniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.
- Coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed.
- Coniferous drilled and notched lumber and angle cut lumber.
- Coniferous lumber stacked on edge and fastened together with nails, whether or not with plywood sheathing.
- Components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above.

Softwood lumber product imports are generally entered under Chapter 44 of the Harmonized Tariff Schedule of the United States (''HTSUS''). This chapter of the HTSUS covers ''Wood and articles of wood.'' Softwood lumber products that are subject to this investigation are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44: 4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; and 4418.90.25.00.

Subject merchandise as described above may also be classified as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts under the following ten-digit HTSUS subheadings in Chapter 44: 4415.20.40.00; 4415.20.80.00; 4418.90.46.05; 4418.90.46.20; 4418.90.46.40; 4418.90.46.95; 4421.90.70.40; 4421.90.94.00; and 4421.90.97.80.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2016–30780 Filed 12–21–16; 8:45 am]

BILLING CODE 3510–DS–P

[65] *See* section 782(b) of the Act.

[66] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–858]

Certain Softwood Lumber Products From Canada: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

DATES: Effective December 15, 2016.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski at (202) 482–1395, or Lana Nigro at (202)-482–0698, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On November 25, 2016, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of certain softwood lumber products (softwood lumber) from Canada,[1] filed in proper form, on behalf of the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (COALITION) (hereinafter, Petitioner).[2]

On November 30 and December 2, 2016, the Department requested additional information and clarification of certain aspects of the Petition.[3] Petitioner filed responses to these requests on December 1 and 5, 2016.[4] Further, Petitioner submitted revised versions of two exhibits originally provided in Volume III of the Petition.[5] On December 7, 2016, in consultations the Department held with respect to the CVD petition, the Government of Canada (GOC) provided comments on, and requested the Department poll the

[1] *See* Letter from Petitioner, ''Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada,'' November 25, 2016 (Petition), at Volume III.

[2] The COALITION is an ad hoc association whose members include U.S. Lumber Coalition, Inc.; Collum's Lumber Products, L.L.C.; Hankins, Inc.; Potlatch Corporation; Rex Lumber Company; Seneca Sawmill Company; Sierra Pacific Industries; Stimson Lumber Company; Swanson Group; Weyerhaeuser Company; Carpenters Industrial Council; Giustina Land and Timber Company; and Sullivan Forestry Consultants, Inc. *Id.,* Volume I at 2.

[3] *See* Letter from the Department, ''Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada: Supplemental Questions,'' November 30, 2016 (General Issues Supplemental Questionnaire); *see also* Letter from the Department, ''Petition for the Imposition of Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada: Supplemental Questions,'' December 2, 2016 (Countervailing Duty Petition Supplemental Questionnaire).

[4] *See* Letter from Petitioner, ''Supplement to the Petitions for the Imposition of Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada: Response to the Department's Supplemental Questions'' December 1, 2016 (Petition Supplement); *see also* Letter from Petitioner, ''Petition for the Imposition of Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada: Response to Supplemental Questions,'' December 5, 2016 (Countervailing Duty Petition Supplemental Questionnaire Response).

[5] *See* Letter from Petitioner, ''Supplement to the Petition for the Imposition of Countervailing Duties on Imports of Certain Softwood Lumber Products from Canada: Correction of Production Errors'' December 2, 2016.

industry to determine, industry support.[6] On December 8, 2016, Petitioner provided a response to the GOC comments on industry support.[7]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that the GOC and the governments of certain Canadian provinces are providing countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, to manufacturers, producers, or exporters of softwood lumber from Canada, and that imports of such softwood lumber products are materially injuring, or threatening material injury to, an industry in the United States. Additionally, consistent with section 702(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations of subsidy programs in Canada on which we are initiating a CVD investigation.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because Petitioner is an interested party, as defined by section 771(9)(F) of the Act. As discussed in the ''Determination of Industry Support for the Petition'' section, below, the Department also finds that Petitioner demonstrated sufficient industry support with respect to initiation of the requested CVD investigation.

Period of Investigation

As discussed below in the section ''Respondent Selection,'' in the event the Department determines that the number of companies involved in the investigation is large and it cannot individually examine each company based upon the Department's resources, we intend to select company respondents using data from U.S. Customs and Border Protection (CBP). Should we conduct this investigation on a company-specific basis, the period of investigation would be January 1, 2015, through December 31, 2015.[8]

Scope of the Investigation

The product covered by this investigation is certain softwood lumber products from Canada. For a full description of the scope of this investigation, see the Appendix to this notice.

Comments on the Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, Petitioner pertaining to the proposed scope to ensure that the scope language in the Petition accurately reflected the products for which the domestic industry is seeking relief.[9] As a result of those exchanges, the scope of the Petition was modified to clarify the description of merchandise covered by the Petition. The class or kind of merchandise covered by this initiation, as described in the Appendix to this notice, reflects that clarification.

As discussed in the preamble to the Department's regulations,[10] we are setting aside a period of time for interested parties to raise issues regarding product coverage (*i.e.,* scope). The Department will consider all comments received and, if necessary, consult with parties prior to the issuance of the preliminary determinations in this investigation and the companion antidumping duty investigation concurrently being initiated. If scope comments include factual information,[11] all such factual information should be limited to public information. The Department requests that all interested parties submit scope comments by 5:00 p.m. Eastern Standard Time (EST) on Wednesday, January 4, 2017, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information (and also should be limited to public information), must be filed by 5:00 p.m. EST on Tuesday, January 17, 2017, which is the first business day ten calendar days after the initial comments deadline.[12]

The Department requests that any factual information parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments and information must be filed on the records of the CVD investigation and the concurrent AD investigation.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[13] An electronically-filed document must be successfully received, in its entirety, by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to section 702(b)(4)(A) of the Act, the Department notified representatives of the GOC of its receipt of the Petition and provided them with the opportunity for consultations regarding the CVD allegations.[14] On December 7, 2016, the Department held consultations with the GOC.[15] All letters and memoranda pertaining to these consultations are available via ACCESS.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the

[6] *See* Letter from the Government of Canada, ''Certain Softwood Lumber from Canada: Submission of Consultations Paper,'' December 7, 2016 (GOC Comments).

[7] *See* Letter from Petitioner, ''Comments on Government of Canada's Consultations Paper,'' December 8, 2016 (Petitioner's Response to GOC Comments); *see also* Memorandum to the File Re: Consultations with Officials from the Government of Canada, December 7, 2016 (CVD Consultations Memo), which references the GOC comments.

[8] *See* 19 CFR 351.204(b)(2).

[9] *See* General Issues Supplemental Questionnaire; *see also* General Issues Supplemental Questionnaire Response.

[10] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 2007).

[11] *See* 19 CFR 351.102(b)(21).

[12] *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.'')

[13] *See* 19 CFR 351.303 (describing general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011) (detailing the Department's electronic filing requirements, which went into effect on August 5, 2011). Helpful information on using ACCESS can be found at *https://access.trade.gov/help.aspx,* and the ACCESS handbook is available at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

[14] *See* Letter from the Department, ''Certain Softwood Lumber Products from Canada: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' November 28, 2016.

[15] *See* Department Memorandum, ''Countervailing Duty Petition on Certain Softwood Lumber Products from Canada,'' December 7, 2016.

petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[16] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[17]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of this investigation. Based on our analysis of the information submitted on the record, we have determined that softwood lumber constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[18]

In determining whether Petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix to this notice. To establish industry support, Petitioner provided actual 2015 production data of the domestic like product for all U.S. softwood lumber producers that support the Petition.[19] Petitioner also estimated the 2015 softwood lumber production of those U.S. softwood lumber producers/sawmills whose workers are represented by the Carpenters Industrial Council, a recognized union and a member of the COALITION.[20] Petitioner estimated total 2015 production of the domestic like product for the entire domestic industry based on production data published by *Lumber Track,* adjusted to account for any flooring and siding produced outside sawmills that may have not been included in the published production data.[21] Petitioner compared the total production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.[22] We relied upon data Petitioner provided for purposes of measuring industry support.[23]

On December 7, 2016, we received comments on industry support from the GOC.[24] Petitioner responded to the GOC's Comments on December 8, 2016.[25] For further discussion of these comments, *see* the Canada CVD Initiation Checklist, at Attachment II.

Our review of the data provided in the Petition, the Petition Supplement, letters from the GOC and Petitioner, and other information readily available to the Department indicates that Petitioner has established industry support.[26] First, the Petition established support from domestic producers and workers accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[27] Second, the domestic producers and workers have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers and workers who support the Petition account for at least 25 percent of the total production of the domestic like product.[28] Finally, the domestic producers and workers have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers and workers who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[29] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(F) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department initiate.[30]

Injury Test

Because Canada is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S.

[16] *See* section 771(10) of the Act.

[17] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989).

[18] For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Certain Softwood Lumber Products from Canada (Canada CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Softwood Lumber Products from Canada (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[19] *See* Petition, Volume I, at 6–7 and Exhibit 10; *see also* Petition Supplement, at 8–9 and Exhibit 10.

[20] *See Id.* at 6–9 and Exhibits 10 and 14.

[21] *Id.,* at 4–6 and Exhibits 2 and 56.

[22] *See Id.* at 4–10 and Exhibit 10; *see also* Petition Supplement, at 8–9 and Exhibit 10.

[23] *Id.* For further discussion, *see* Canada CVD Initiation Checklist, at Attachment II.

[24] *See* GOC Comments, at 5–9.

[25] *See* Petitioner's Response to GOC Comments, at 4–7.

[26] *See* Canada CVD Initiation Checklist, at Attachment II.

[27] *See* section 702(c)(4)(D) of the Act; *see also* Canada CVD Initiation Checklist, at Attachment II.

[28] *See* Canada CVD Initiation Checklist, at Attachment II.

[29] *Id.*

[30] *See* Canada CVD Initiation Checklist, at Attachment II.

industry producing the domestic like product. In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[31]

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; lost sales and revenues; mill closures and layoffs; and adverse impact on the domestic industry's key trade and financial indicators, including financial performance, production, and capacity utilization.[32] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[33]

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that (1) alleges the elements necessary for the imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

Petitioner alleges that exporters/producers of softwood lumber in Canada benefited from countervailable subsidies bestowed by the GOC and the governments of certain Canadian provinces. The Department examined the Petition and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, and/or exporters of softwood lumber from Canada receive countervailable subsidies from the GOC and/or the governments of certain Canadian provinces, as alleged by Petitioner.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the Act.[34] The TPEA does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[35] The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this CVD investigation.[36] Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 33 of 38 alleged programs. For a full discussion of the basis for our decision to initiate or not to initiate on each program, *see* CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on *ACCESS.*

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination in this investigation no later than 65 days after the date of initiation.

Critical Circumstances

Petitioner alleges, based on trade statistics and documented prior knowledge of an impending trade case, that there is a reasonable basis to believe or suspect that critical circumstances exist with regard to imports of softwood lumber from Canada.[37]

Section 703(e)(1) of the Act provides that if a petitioner alleges critical circumstances, the Department will find that such circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect: (A) That ''the alleged countervailable subsidy'' is inconsistent with the Agreement on 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 351.206(h)(2) of the Department's regulations provides that, generally, imports must increase by at least 15 percent during the ''relatively short period'' to be considered ''massive'' and section 351.206(i) 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)[38] and ending at least three months later.[39] 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.''[40]

Petitioner alleges that Canadian softwood lumber producers benefit from numerous Canadian government subsidies, which include subsidies that are contingent upon export performance. Specifically, Petitioner alleges that under the Export Development Canada: Export Guarantee Program, the GOC provides loan guarantees in support of working capital requirements in order to promote the export of subject merchandise.[41]

Petitioner also asserts that there have been massive imports of softwood lumber over a relatively short period. Petitioner contends that, pursuant to 19 CFR 351.206(i), the Department should evaluate the level of imports during a period prior to the filing of the Petition, because importers and foreign exporters and producers had reason to believe that a countervailing duty petition was likely.[42] In particular, Petitioner provided news articles and industry publications to demonstrate that importers and foreign exporters and producers were aware that the Softwood Lumber Agreement (SLA) expired on October 12, 2015, and that after October 12, 2016, the domestic industry in the United States would once again be permitted to file a CVD petition.[43] Accordingly, Petitioner asserts that importers and foreign exporters and producers were aware that they had a one-year period following the expiration of the SLA to ship subject merchandise without being subject to countervailing duties.[44] Therefore, to consider whether imports of softwood lumber were massive over a relatively short period of time, Petitioner contends that the Department should compare import levels during January 2015 through October 2015 (base period) with import levels during November 2015 through

[31] *See* Petition, Volume I, at 34 and Exhibit 27.

[32] *Id.,* at 28–30, 34–67 and Exhibits 2, 3, 19, 24, 26–27, 29, 32, 34, 36–53, and 59–60; *see also* Petition Supplement, at 9 and Exhibit 59.

[33] *See* Canada CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Softwood Lumber Products from Canada.

[34] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[35] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

[36] *Id.,* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[37] *See* Petition, Volume I, at 67–78.

[38] *See* 19 CFR 351.102(b)(40) (providing that a proceeding begins on the date of the filing of a petition).

[39] *See* 19 CFR 351.206(i).

[40] *See id.*

[41] *See* Petition, Volume III, at 231–236.

[42] *See id.* at 69–70.

[43] *See id.* at 70–72 and Exhibits 39, 64, 65, 67. Petitioner notes that there was a one-year ''standstill'' period during which domestic industry was not permitted to file a CVD petition. *Id.* at 70–72.

[44] *See id.* at 72–73.

August 2016 (comparison period).[45] Based on Petitioner's calculation, the import volume of softwood lumber surged 25.56 percent between the base and comparison periods, and the value of imports surged 18.11 percent.[46] Petitioner asserts that because the surge in imports constituted more than a 15 percent change, import volumes of softwood lumber are massive, as defined in the Department's regulations.

Petitioner requests that the Department make a preliminary finding of critical circumstances within 45 days of the filing of the Petition.[47] Section 702(e) of the Act states that if ''at any time after the initiation of an investigation under this subtitle, the administering authority finds a reasonable basis to suspect that the alleged countervailable subsidy is inconsistent with the {SCM} Agreement, the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise.''

Taking into consideration the foregoing, we will analyze this matter further. We will monitor imports of softwood lumber products from Canada and may request that CBP compile information on an expedited basis regarding entries of subject merchandise.[48] If, at any time, the criteria for a finding of critical circumstances are established, we will issue a critical circumstances determination at the earliest possible date.[49]

Respondent Selection

Petitioner named hundreds of companies as producers/exporters of softwood lumber from Canada.[50] The Department intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event the Department determines that the number of companies is large and it cannot individually examine each company based upon the Department's resources, where appropriate, the Department intends to select mandatory respondents based on CBP data for U.S. imports of softwood lumber from Canada during the period of investigation under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the ''Scope of the Investigation,'' in the Appendix. The Department also intends to release CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five business days of publication of this **Federal Register** notice. Interested parties wishing to comment regarding the CBP data must do so within seven calendar days after the placement of the CBP data on the record of this investigation. Because a ''company-specific'' methodology is a departure from the ''aggregate'' methodology used in previous investigations of certain softwood lumber products from Canada,[51] the Department invites comments regarding the appropriate subsidy rate methodology to use in this investigation. These comments are due within seven calendar days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at *http://enforcement.trade.gov/apo.*

Comments for this investigation must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. EST, by the dates noted above. We intend to finalize our decision regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC via ACCESS. Because of the particularly large number of producers/exporters identified in the Petition,[52] the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by delivery of the public version to the GOC consistent with 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days of the date on which the Petition was filed, whether there is a reasonable indication that imports of softwood lumber in Canada are materially injuring, or threatening material injury to, a U.S. industry.[53] A negative ITC determination will result in the investigation being terminated;[54] otherwise, the investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i) through (iv). The regulation requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Specific time limits for submission of factual information, based on the type of factual information being submitted, are provided at 19 CFR 351.301. Parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under Part 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different deadline after which extension requests will be considered untimely for submissions that are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline

[45] *See id.* at 73–74.

[46] *See id.*

[47] *See id.* at 69.

[48] *See* Section 702(e) of the Act.

[49] *See* Policy Bulletin 98/4, 63 FR 55364 (October 15, 1998).

[50] *See* Petition, Volume I, at 28 and Exhibit 61.

[51] *See e.g., Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada,* 67 FR 15545 (April 2, 2002) and Accompanying Issues and Decision Memorandum. *See also* section 777A(e)(2)(B) of the Act

[52] *See* Petition, Volume I at Exhibit 61.

[53] *See* section 703(a)(2) of the Act.

[54] *See* section 703(a)(1) of the Act.

(including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify the accuracy and completeness of that information.[55] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the revised certification formats provided at the end of the *Final Rule.*[56] The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing letters of appearance, as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act.

[55] *See* section 782(b) of the Act.

[56] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

Dated: December 15, 2016.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is softwood lumber, siding, flooring and certain other coniferous wood (''softwood lumber products''). The scope includes:

- Coniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.
- Coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed.
- Coniferous drilled and notched lumber and angle cut lumber.
- Coniferous lumber stacked on edge and fastened together with nails, whether or not with plywood sheathing.
- Components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above.

Softwood lumber product imports are generally entered under Chapter 44 of the Harmonized Tariff Schedule of the United States (''HTSUS''). This chapter of the HTSUS covers ''Wood and articles of wood.'' Softwood lumber products that are subject to this investigation are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44: 4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; and 4418.90.25.00.

Subject merchandise as described above may also be classified as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts under the following ten-digit HTSUS subheadings in Chapter 44: 4415.20.40.00; 4415.20.80.00; 4418.90.46.05; 4418.90.46.20; 4418.90.46.40; 4418.90.46.95; 4421.90.70.40; 4421.90.94.00; and 4421.90.97.80.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2016–30774 Filed 12–21–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE962

Endangered and Threatened Species; Initiation of 5-Year Review for the Endangered Black Abalone and the Endangered White Abalone

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

ACTION: Notice of initiation of 5-year review; request for information.

SUMMARY: NMFS announces its intent to conduct 5-year reviews for the black abalone (*Haliotis cracherodii*) and the white abalone (*Haliotis sorenseni*) under the Endangered Species Act of 1973, as amended (ESA). Both the black abalone and white abalone are listed as endangered under the ESA. NMFS is required by the ESA to conduct 5-year reviews to ensure that the listing classifications of the species are accurate. The 5-year reviews must be based on the best scientific and commercial data available at the time. We request submission of any such information on black abalone and white abalone, particularly information on the status, threats, and recovery of the species that has become available since the final listing decision for white abalone in May 2001 and black abalone in January 2009.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than February 21, 2017. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit your comments by including NOAA–NMFS–2016–0146 by either of the following methods:

- *Federal e-Rulemaking Portal.* Go to *www.regulations.gov/#!docketDetail:D=NOAA-NMFS-2016-0146*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail or hand-deliver written information to Melissa Neuman, NMFS West Coast Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or

individual, or received after the end of the specified period. All comments received are a part of the public record and NMFS will generally post for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive or protected information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Melissa Neuman, NMFS West Coast Region, at 562–980–4115.

SUPPLEMENTARY INFORMATION: The white abalone was listed as endangered under the ESA on May 29, 2001 and the black abalone was listed as endangered under the ESA on January 14, 2009 (74 FR 1937). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every five years. On the basis of such reviews under section 4(c)(2)(B), we determine whether a species should be delisted or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; or (3) the original data available when the species was listed, or the interpretation of such data, were in error. 50 CFR 424.11(d). Any change in Federal classification would require a separate rulemaking process. The ESA implementing regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active reviews of the white abalone and black abalone, both currently listed as endangered.

Background information on white abalone, including the endangered listing, is available on the NMFS Office of Protected Species Web site at: *www.fisheries.noaa.gov/pr/species/invertebrates/abalone/white-abalone.html.* Background information on black abalone, including the endangered listing, is available on the NMFS Office of Protected Species Web site at: *www.fisheries.noaa.gov/pr/species/invertebrates/abalone/black-abalone.html.*

Determining If a Species Is Threatened or Endangered

Section 4(a)(1) of the ESA requires that we determine whether a species is endangered or threatened based on one or more of the five following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Section 4(b) also requires that our determination be made on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, to protect such species.

Public Solicitation of New Information

To ensure that the 5-year reviews are complete and based on the best available scientific and commercial data, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of white abalone and/or black abalone. The 5-year reviews consider the best scientific and commercial data that has become available since the listing determination for white abalone in May 2001 and for black abalone in January 2009. Categories of requested information include: (1) Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and important features for conservation; (3) status and trends of threats; (4) conservation measures that have been implemented that benefit the species, including monitoring data demonstrating effectiveness of such measures; (5) need for additional conservation measures; and (6) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes and improved analytical methods for evaluating extinction risk.

If you wish to provide information for the 5-year reviews, you may submit your information and materials electronically or via mail (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. We also would appreciate the submitter's name, address, and any association, institution, or business that the person represents; however, anonymous submissions will also be accepted.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 14, 2016.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–30710 Filed 12–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF092

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Management Team (GMT) will hold a week-long work session that is open to the public.

DATES: The GMT meeting will begin at 1 p.m. on Monday, January 9, 2017, and end at close of business on Friday, January 13, 2017, to view the agenda see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Pacific Council, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Ames, Pacific Council, 503–820–2426.

SUPPLEMENTARY INFORMATION:

Agenda

The primary purpose of the GMT working meeting is to prepare for the 2017 Council meetings, including the development of harvest specifications and management measures for 2019–2020. Specific agenda topics include revisions to the nearshore and non-nearshore projection models; review of the *sablefish* and *lingcod* discard mortality rates; and review of the latest West Coast *Groundfish* Observer Program data. A detailed agenda will be available on the Council's Web site prior to the meeting. The GMT may also address other assignments relating to *groundfish* management. No management actions will be decided by

the GMT. The GMT's task will be to develop recommendations for consideration by the Pacific Council at its meetings in 2017.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, at 503–820–2425 at least ten business days prior to the meeting.

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

Dated: December 16, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016–30722 Filed 12–21–16; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled AmeriCorps State and National Grantee Progress Report for review and approval in accordance with the Paperwork Reduction Act of 1995. Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Carla Ganiel, at 202–606–6773 or email to *cganiel@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

DATES: Comments may be submitted, identified by the title of the information collection activity, within January 23, 2017.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) *By email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published pursuant to the PRS, Public Law 104–13, (44 U.S.C. Chapter 35), in the **Federal Register** on September 16, 2016, at 81 FR 63746. This comment period ended November 15, 2016. Five public comments were received from this Notice.

Summary of comments by Category and CNCS response:

Category 1: Statements of Support for a GPR Update. A total of four comments expressed support for updates to the GPR instructions. One commenter noted that the revised instructions eliminated duplication. Two commenters expressed support for changes made to narrative questions. One commenter expressed appreciation for CNCS's electronic reporting system.

Response: CNCS agrees with these comments.

Category 2: Time Estimate. Two comments addressed the time estimate. One commenter stated that the time estimate of 8 hours per GPR was accurate. One commenter stated that the time estimate should be set at 10 hours per GPR.

Response: CNCS believes that the time required varies depending on the type of GPR and has adjusted time to reflect this variation. CNCS estimates ten hours for end-of-year GPRs, eight hours for mid-year GPRs and four hours for final GPRs and planning grants.

Category 3: Demographic Indicators. Three comments addressed demographic indicators. Two commenters suggested removal of outdated demographic indicators in the Volunteer Generation Fund demographics. One commenter stated that new monitoring demographics in the Commission Support Grant GPR would increase burden, and two commenters questioned the utility and clarity of proposed demographic indicators related to monitoring activities.

Response: CNCS has removed the indicators specified in the public comments from the Volunteer Generation Fund and Commission Support Grant GPRs.

Category 4: Instructions. Two comments stated that the Commission-specific GPR guidance was difficult to understand.

Response: This comment is outside the scope of the information request, which does not include Commission-specific GPR guidance.

Category 5: Midyear GPR. Two comments recommended removing the requirement to explain unmet performance measure targets in the mid-year GPR.

Response: CNCS agrees and has removed the requirement to explain unmet targets in the mid-year GPR.

Category 6: Narratives. Four comments addressed GPR narrative questions. One commenter recommended an additional narrative question requiring national direct grantees to describe how they collaborate with State Commissions. Two commenters did not support removing narrative questions from the Volunteer Generation Fund GPR. Two commenters stated that the ''other explanations'' narrative should only be used to collect information specified in the GPR instructions.

Response: The recommended question for national direct grantees would not provide enough useful information to justify its inclusion in the GPR. While some narratives have been removed from the Volunteer Generation Fund instructions to reduce burden and duplication, CNCS has revised one of the remaining narratives to collect additional information about VGF activity. CNCS intends that the

''other explanations'' narrative will only be used to collect information specified in the GPR instructions, primarily narrative responses that exceed character limits in other narrative fields in the electronic reporting system.

Category 7: Previous GPR Instructions. CNCS received one comment on the previous version of the GPR instructions.

Response: The current information collection replaces the previous version of the GPR instructions. This comment is therefore outside the scope of the information request.

Category 8: GPR Processes. Four comments addressed GPR-related processes that are not part of the information collection itself. Two commenters stated that the GPR duplicates information collected in past performance and recommendation summaries required as part of the grant application process. Three commenters suggested that CNCS provide a list of GPR reporting requirements in the grant Terms & Conditions. One commenter recommended that there be one GPR for multiple prime grants in a state. One commenter recommended that CNCS make changes to its electronic reporting system so that grant amendments do not interfere with completion and submission of the GPR.

Response: These comments are outside the scope of the information request. CNCS has attempted to address incomplete GPR data by requesting additional data during the application process. Data collection will remain in the GPR; however, comments will be shared with the application planning team. CNCS will add a list of GPR reporting requirements to the grant Terms & Conditions. In the current electronic reporting system it is not possible to aggregate data from multiple prime grants awarded in one state, but this is a goal for the reporting system currently under development. CNCS is currently pursuing changes to the existing electronic reporting system to address the issue of grant amendments that interfere with completion and submission of the GPR.

Category 9: Timing. One comment was received concerning the timing of off-cycle performance measure data. Some programs may collect performance measure data after the GPR reporting period has ended, and one commenter recommended that CNCS develop a more useful way to collect off-cycle performance measure data.

Response: CNCS will revise guidance about how to report off-cycle performance measure data in subsequent GPRs or the final GPR.

Description: CNCS requires grantees of AmeriCorps State and National, School Turnaround AmeriCorps, Commission Support Grant, Commission Investment Funds, and the Volunteer Generation Fund to submit Grantee Progress Reports (GPRs). This information collection comprises the questions that grantees of these grant programs will answer to report progress to CNCS.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps State and National Grantee Progress Report

OMB Number: TBD.

Agency Number: None.

Affected Public: Grantees of AmeriCorps State and National, School Turnaround AmeriCorps, Commission Support Grant, Commission Investment Funds, and Volunteer Generation Fund.

Total Respondents: 300 total respondents for AmeriCorps State and National and School Turnaround AmeriCorps. 52 respondents each for Commission Support Grants and Commission Investment Funds. 20 respondents for Volunteer Generation Fund.

Frequency: Semiannual for AmeriCorps State and National and School Turnaround AmeriCorps operational grants with an additional final GPR at the end of the award period. Annual for Volunteer Generation Fund, Commission Support Grant and Commission Investment Funds. Average Time Per Response: 11 hours for AmeriCorps GPRs. 10 hours for all other GPRs.

Estimated Total Burden Hours: 7,040.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: December 16, 2016.

Bill Basl,

Director, AmeriCorps State and National.

[FR Doc. 2016–30865 Filed 12–21–16; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for the KC–46A Main Operating Base #4 Beddown

AGENCY: United States Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The United States Air Force (USAF) is issuing this notice to advise the public of the intent to prepare an Environmental Impact Statement (EIS) for the KC–46A Main Operating Base #4 (MOB 4) Beddown. The EIS will assess the potential environmental consequences of various alternatives of the beddown of KC–46A tanker aircraft, associated infrastructure and personnel in support of the MOB 4 mission at an existing active duty, continental United States Air Force Base (AFB).

DATES: USAF invites the public, stakeholders, and other interested parties to attend open house public scoping meetings from 5 p.m. to 8 p.m. in the following locations on the following dates:

1. Travis AFB: January 10, 2017; Northern Solano Association of Realtors, Fairfield, California.
2. Fairchild AFB: January 12, 2017; The Lincoln Center, Lincoln Ballroom, Spokane, Washington.
3. Joint Base McGuire-Dix Lakehurst (JBMDL): January 17, 2017; New Hanover Township Senior Center, Cookstown, New Jersey.
4. Dover AFB: January 19, 2017; AMC Museum, Dover, Delaware.
5. Grand Forks AFB: January 24, 2017; Alerus Center, Hawk Meeting Room, Grand Forks, North Dakota.

ADDRESSES: The project Web site (*www.KC–46A–MOB4.com*) provides more information on the EIS and can be used to submit scoping comments. Scoping comments may also be submitted to Mr. Bill Bushman, AFCEC/CZN; Attn: KC–46A MOB 4 EIS; 2261 Hughes Ave, Suite 155; JBSA Lackland, TX 78236–9853.

Comments will be accepted at any time during the environmental impact analysis process. However, to ensure the USAF has sufficient time to consider public input in the preparation of the Draft EIS, scoping comments should be submitted to the Web site or the address listed above by February 3, 2017.

SUPPLEMENTARY INFORMATION: The MOB 4 mission includes the beddown of 24 or 36 KC–46A aircraft in two or three squadrons, respectively. The KC–46A aircraft will recapitalize the aging tanker fleet and would continue supporting the mission of providing worldwide refueling, cargo, and aeromedical evacuation support. The proposed basing alternatives for MOB 4 mission include Dover AFB, Delaware; Fairchild AFB, Washington; Grand Forks AFB, North Dakota; JBMDL, New Jersey; and Travis AFB, California.

Scoping and Agency Coordination: To effectively define the full range of issues to be evaluated in the EIS, the USAF will determine the scope of the analysis by soliciting comments from interested

local, state and federal elected officials and agencies, as well as interested members of the public and others. Implementation of the KC–46A MOB 4 mission at Dover AFB, Grand Forks AFB, JBMDL and Travis AFB would have the potential to be located in a floodplain and/or wetland. Consistent with the requirements and objectives of Executive Order (EO) 11990, ''Protection of Wetlands,'' and EO 11988, ''Floodplain Management,'' as amended by EO 13690, ''Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input,'' state and federal regulatory agencies with special expertise in wetlands and floodplains will be contacted to request comment. Consistent with EO 11988, EO 13690, and EO 11990, this Notice of Intent initiates early public review of the alternatives that have the potential to be located in a floodplain and/or wetland. Scoping meetings will be held in the local communities near the alternative basing locations. The scheduled dates, times, locations, and addresses for the scoping meetings will also be published in local media a minimum of 15 days prior to the scoping meetings.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2016–30828 Filed 12–21–16; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2016–0042; OMB Control Number 0704–0286]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Publicizing Contract Actions

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed revision of an approved information collection requirement.

SUMMARY: DoD announces the proposed revision of a public information collection requirement and seeks public comment on the provisions thereof. The Office of Management and Budget (OMB) has approved this information collection for use through March 31, 2017. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD will consider all comments received by February 21, 2017.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0286, using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: osd.dfars@mail.mil. Include OMB Control Number 0704–0286 in the subject line of the message.

Fax: 571–372–6094.

Mail: Defense Acquisition Regulations System, Attn: Ms. Carrie Moore, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, at 571–372–6093. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.* Paper copies are available from Ms. Carrie Moore, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), *DoD invites comments on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Title and OMB Number: Defense FAR Supplement (DFARS) Part 205, Publicizing Contract Actions, and DFARS 252–205–7000, Provision of Information to Cooperative Agreement Holders; OMB Control Number 0704–0286.

Needs and Uses: DFARS 205.470 prescribes the use of the clause at DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts, including solicitations and contracts using Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial items, which are expected to exceed $1,000,000. This clause implements 10 U.S.C. 2416. The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year. Upon receipt of a contractor's list, the cooperative agreement holder utilizes the information to help businesses identify and pursue contracting opportunities with DoD and expand the number of businesses capable of participating in Government contracts.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Number of Respondents: 6,272.

Responses per Respondent: 1.

Annual Responses: 6,272.

Average Burden per Response: Approximately 1.1 hours.

Annual Burden Hours: 6,899.

Reporting Frequency: On occasion.

Summary of Information Collection

DFARS 205.470 prescribes the use of the clause at DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, which are expected to exceed $1,000,000. The clause requires contractors to provide cooperative agreement holders, upon request, with a list of the contractor's employees or offices responsible for entering into subcontracts under DoD contracts. The list must include the business address, telephone number, and area of responsibility of each employee or office.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2016–30668 Filed 12–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2016–0044; OMB Control Number 0704–0231]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Service Contracting

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed

extension of an approved information collection requirement.

SUMMARY: DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. The Office of Management and Budget (OMB) has approved this information collection for use through March 31, 2017. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD will consider all comments received by February 21, 2017.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0231, using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: osd.dfars@mail.mil. Include OMB Control Number 0704–0231 in the subject line of the message.

Fax: 571–372–6094.

Mail: Defense Acquisition Regulations System, Attn: Ms. Lee Renna, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Renna, at 571–372–6095. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.* Paper copies are available from Ms. Lee Renna, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), *DoD invites comments on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) The accuracy of the estimate of the burden of the proposed information collection; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 237, Service Contracting, associated DFARS Clauses at DFARS 252.237, and DD Form 2063, Record of Preparation and Disposition of Remains (Within CONUS); OMB Control Number 0704–0231.

Needs and Uses: This information collection is used for the following purposes—

- DFARS 252.237–7000(c)—to verify that the offeror is properly licensed in the state or other political jurisdiction where the offeror operates its professional practice.
- DFARS 252.237–7011 and DD Form 2063, Record of Preparation and Disposition of Remains (Within CONUS)—to verify that the deceased's remains have been properly cared by the mortuary contractor.
- DFARS 252.237–7024—this written plan, submitted concurrently with the proposal or offer, allows the contracting officer to assess the offeror's capability to continue providing contractually required services to support the DoD component's mission essential functions in an emergency.
- DFARS 252.237–7023—allows the contracting officer to provide approval of updates to the contractor's plan, provided under 252.237–7024, to ensure that the contractor can continue to provide services in support of the DoD component's required mission essential functions in an emergency.

Affected Public: Businesses and other for-profit and not-for profit institutions.

Number of Respondents: 2,637.

Responses per Respondent: 1.3, approximately.

Annual Responses: 3,519.

Average Burden per Response: 1.6, approximately.

Annual Burden Hours: 5,801.

Reporting Frequency: On occasion.

Summary of Information Collection

DFARS 237.270 prescribes the use of the provision at DFARS 252.237–7000, Notice of Special Standards, in solicitations for the acquisition of audit services. The provision requires the apparently successful offeror to submit evidence that it is properly licensed in the state or political jurisdiction it operates its professional practice.

DFARS 237.7003 prescribes the use of the clause at 252.237–7011, Preparation History, in all mortuary service solicitations and contracts. The information collected is used to verify that the remains have been properly cared for and the DD Form 2063 is generally used for this purpose.

DFARS 237.7603(b) prescribes the use of the provision at 252.237–7024, Notice of Continuation of Essential Contractor Services, in solicitations that require the acquisition of services to support a mission essential function. The provision requires the offeror to submit a written plan demonstrating its capability to continue to provide the contractually required services to support a DoD component's mission essential functions in an emergency.

DFARS 237.7603(a) prescribes the use of the clause at DFARS 252.237–7023, Continuation of Essential Contractor Services, in solicitations and contracts for services in support of mission essential functions. The clause requires the contractor to maintain and update its written plan as necessary to ensure that it can continue to provide services to support the DoD component's mission essential functions in an emergency.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2016–30669 Filed 12–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2016–0045; OMB Control Number 0704–0253]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Subcontracting Policies and Procedures

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. The Office of Management and Budget (OMB) has approved this information collection requirement for use through March 31, 2017. DoD proposes that OMB extend its approval for an additional three years.

DATES: DoD will consider all comments received by February 21, 2017.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0253, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0253 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Tom Ruckdaschel, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting. Please allow 30 days for posting of comments submitted by postal mail.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Ruckdaschel, telephone 571–372–6088. The information collection requirements addressed in this notice are available at: *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.* Paper copies are available from Mr. Tom Ruckdaschel, OUSD(AT&L)DPAP(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Title and OMB Number: Subcontracting Policies and Procedures—DoD FAR Supplement Part 244; OMB Control Number 0704–0253.

Needs and Uses: Administrative contracting officers use this information in making decisions to approve or disapprove a contractors purchase system. The disapproval of a contractor's purchasing system would necessitate Government consent to individual subcontracts and possibly prompt a financial withhold or other Government rights and remedies.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondents: 36.

Responses per Respondent: 2.

Annual Responses: 72.

Hours per Response: 8.

Estimated Hours: 576.

Frequency: On occasion.

Summary of Information Collection

DFARS 244.305, entitled Granting, Withholding, or Withdrawing Approval, provides policy guidance for administrative contracting officers to determine the acceptability of the contractor's purchasing system and approve or disprove the system, at the completion of the in-plant portion of a contractor purchasing system review, and to pursue correction of any deficiencies with the contractor. DFARS clause 252.244–7001, Contractor Purchasing System Administration requires the contractor to respond within 30 days to a written initial determination from the contracting officer that identifies significant deficiencies in the contractor's purchasing system. The contracting officer will evaluate the contractor's response to this initial determination and notify the contractor in writing of any remaining significant deficiencies, the adequacy of any proposed or completed corrective action and system disapproval if the contracting officer determines that one or more significant deficiencies remain. If the contractor receives the contracting officer's final determination of significant deficiencies, the contractor has 45 days to either correct the significant deficiencies or submit an acceptable corrective action plan.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2016–30667 Filed 12–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0067]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 23, 2017.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Joint Civilian Orientation Conference Program (JCOC) Eligibility of Nominators and Candidates; JCOC Nomination Form, JCOC Registration Form, JCOC Medical Form; OMB Control Number 0704–XXXX.

Type of Request: New.

Number of Respondents: 180.

Responses per Respondent: 1.

Annual Responses: 180.

Average Burden per Response: 11 minutes.

Annual Burden Hours: 33.

Needs and Uses: The information collection requirement is necessary to administer the JCOC Program; to verify the eligibility of nominators and candidates; and to select nominated individuals for participation in JCOC.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: December 16, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–30767 Filed 12–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–556–000]

Grady Wind Energy Center, LLC: Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Grady Wind Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 5, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for 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.

Dated: December 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–30841 Filed 12–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14805–000]

Island Hydroelectric Project; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 14, 2016, Island in the Sky Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Island Hydroelectric Project (Island Project) to be located on the Blackstone River, in Central Falls, Providence County, Rhode Island. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) The existing 10-foot-high, 156-foot-long stone block dam with provisions for 12-inch-high flashboards; (2) an existing 26-acre impoundment with a storage capacity of 120-acre-feet and a normal maximum water surface elevation of 34.9 feet (National Geodetic Vertical Datum of 1929); (3) an existing trashrack and 14- to 40-foot-wide, 70-foot-long forebay; (4) an existing concrete and steel, 40-foot-wide, 70-foot-long powerhouse containing one turbine-generator unit with an installed capacity of 700 kilowatts; (5) a proposed 300-foot-long, 15-kilovolt transmission line connecting the powerhouse to the National Grid distribution system; and (6) appurtenant facilities. The estimated annual generation of the Island Project would be about 4,360 megawatt-hours. The existing dam and appurtenant works are owned by the State of Rhode Island.

Applicant Contact: Mr. Ronald L. Johnson, Island in the Sky Hydro, LLC, PO Box 193, Thorndike, MA 01079; phone: (413) 883–7468.

FERC Contact: Patrick Crile; phone: (202) 502–8042 or email: *Patrick.Crile@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14805–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14805) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 16, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–30852 Filed 12–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–553–000]

Niles Valley Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Niles Valley Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for

blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 5, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for 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.

Dated: December 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–30839 Filed 12–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 619–164]

Pacific Gas and Electric Company and City of Santa Clara, California; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License

b. Project No.: 619–164

c. *Date Filed:* December 12, 2016

d. *Applicant:* Pacific Gas and Electric Company (PG&E) and City of Santa Clara, California

e. *Name of Project:* Bucks Creek Hydropower Project

f. *Location:* The Bucks Creek Project is located on Bucks, Grizzly, and Milk Ranch Creeks in Plumas County, California. Portions of the project are located within the Plumas National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)-825(r)

h. *Applicant Contact:* Alan Soneda, PG&E, Mail Code N13C, P. 0. Box 770000, San Francisco, California 94177–0001; (415) 973–4054

i. *FERC Contact:* Alan Mitchnick at (202) 502–6074 or *alan.mitchnick@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. The Project *Description:*

Bucks Lake Dam and Reservoir (Bucks Creek Development)

The Bucks Lake dam consists of a rock-fill with concrete face dam. It has a structural height of 123 feet and a length of 1,320 feet. Bucks Creek dam impounds Bucks Lake, which extends 5 miles from the dam. Total storage in the 1,827-acre reservoir is approximately 105,605 acre-feet at the normal maximum water surface elevation of approximately 5,157 feet. From Bucks Lake, the project's water flow is released immediately downstream into Lower Bucks Lake.

Three Lakes Dam and Reservoir, and Milk Ranch Conduit (Bucks Creek Development)

The Three Lakes dam consists of a rock-fill dam with a structural height of 30 feet and a length of 584 feet. Three Lakes dam impounds the flow of Milk Ranch Creek, forming Upper Lake, Middle Lake, and Lower Lake, collectively known as Three Lakes reservoir. These water bodies are hydraulically linked and are approximately 0.75 mile from the dam. Total storage in the 40-acre reservoir is approximately 513 acre-feet at the normal maximum water surface elevation of approximately 6,074 feet.

Milk Ranch conduit conveys the project's water flow from Three Lakes reservoir and feeder diversions to Lower Bucks Lake. The maximum capacity of the approximately 8-mile-long conduit is about 70 cubic foot per second (cfs). It collects additional flow from several diversions located on unnamed tributaries.

Lower Bucks Lake Dam and Reservoir (Bucks Creek Development)

The Lower Bucks Lake dam consists of a concrete arch dam with a structural height of 99 feet and a length of 500 feet. Lower Bucks Creek dam impounds Lower Bucks Lake, which extends approximately 1.1 miles from the dam. Total storage in the 136-acre reservoir is approximately 5,843 acre-feet at the normal maximum water surface elevation of approximately 5,022 feet. Water is conveyed from Lower Bucks Lake to the Grizzly powerhouse by the Grizzly powerhouse tunnel.

Grizzly Powerhouse Tunnel (Grizzly Development)

The 12,320-foot-long Grizzly powerhouse tunnel (including a 4,900-foot-long buried penstock) conveys the water flow from Lower Bucks Lake to Grizzly powerhouse. The maximum flow capacity is 400 cfs.

Grizzly Powerhouse (Grizzly Development)

The Grizzly powerhouse is a 65-foot-long by 55-foot-wide, steel frame and concrete building constructed from reinforced concrete, with a maximum capacity of 20 megawatts (MW) and an average annual generation production of 48.9 gigawatt-hours (GWh). Grizzly powerhouse discharges the project's water flow directly into the Grizzly forebay.

A 3.2-mile-long, 115-kilovolt (kV) transmission line transmits power from Grizzly powerhouse to PG&E's 115-kV Caribou-Sycamore transmission line, part of the interconnected system.

Grizzly Forebay Dam and Reservoir (Bucks Creek Development)

The Grizzly forebay dam consists of a concrete arch dam with a structural height of 98 feet and a length of 520 feet. Grizzly forebay dam impounds the

Grizzly forebay, forming the Grizzly forebay reservoir that extends approximately 0.8 mile. Total storage in the 38-acre reservoir is approximately 1,112 acre-feet at the normal maximum water surface elevation of approximately 4,316 feet.

Grizzly Forebay Tunnel (Bucks Creek Development)

From Grizzly forebay, the project's water flow is conveyed through the horseshoe-shaped Grizzly forebay tunnel. The tunnel is 9,575-foot-long with two 4,786-foot-long penstocks leading to Bucks Creek powerhouse. The maximum flow capacity is 400 cfs.

Bucks Creek Powerhouse (Bucks Creek Development)

The project's water flow is conveyed through the Grizzly forebay tunnel to Bucks Creek powerhouse. The Bucks Creek powerhouse is a 47-foot-long by 132-foot-wide, steel frame and concrete building constructed from reinforced concrete. The powerhouse has a total maximum capacity of 65 MW with an average annual generation of 234.8 GWh. The powerhouse connects directly to the non-project switchyard adjacent to the powerhouse part of the interconnected transmission system.

Bucks Creek powerhouse discharges the project's water flow in the North Fork Feather River, one mile upstream of Rock Creek powerhouse, part of PG&E's Rock Creek-Cresta Hydroelectric Project (FERC Project No. 1962).

l. Locations of the Application: 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in item (h) above.

m. 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. Procedural Schedule:

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	February 2017.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	April 2017.
Commission issues Draft Environmental Impact Statement (EIS)	October 2017.
Comments on Draft EIS	December 2017.
Modified Terms and Conditions	February 2018.
Commission Issues Final EIS	May 2018.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the Notice of Ready for Environmental Analysis.

Dated: December 16, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–30851 Filed 12–21–16; 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: ER16–1967–001.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance filing per 4/21/2016 order-Docket No. EL13–88 re: Generator Deactivat to be effective 2/14/2017.
Filed Date: 12/15/16.
Accession Number: 20161215–5249.
Comments Due: 5 p.m. ET 1/5/17.

Docket Numbers: ER16–2656–001.
Applicants: Arizona Public Service Company.
Description: Tariff Amendment: APS Response to Request for Additional Information to be effective 11/23/2016.
Filed Date: 12/16/16.
Accession Number: 20161216–5125.
Comments Due: 5 p.m. ET 1/6/17.

Docket Numbers: ER17–468–001.
Applicants: Ohio Valley Electric Corporation.
Description: Compliance filing: Errata to Amendment J, K and P to be effective 10/14/2016.
Filed Date: 12/16/16.
Accession Number: 20161216–5182.
Comments Due: 5 p.m. ET 1/6/17.

Docket Numbers: ER17–563–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Administrative Filing for Collation Correction to be effective 12/16/2016.
Filed Date: 12/16/16.
Accession Number: 20161216–5082.
Comments Due: 5 p.m. ET 1/6/17.

Docket Numbers: ER17–565–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OATT Definitions and Att Q RE: Refinements to PJM's Credit Policy to be effective 2/14/2017.
Filed Date: 12/16/16.
Accession Number: 20161216–5098.
Comments Due: 5 p.m. ET 1/6/17.

Docket Numbers: ER17–566–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Cost Reimbursement Agreement 2324-Niagara Mohawk and Erie Boulevard Hydropower to be effective 11/18/2016.
Filed Date: 12/16/16.
Accession Number: 20161216–5114.
Comments Due: 5 p.m. ET 1/6/17.

Docket Numbers: ER17–567–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: Southampton Solar Affected System Operating Agreement to be effective 1/19/2017.
Filed Date: 12/16/16.
Accession Number: 20161216–5145.
Comments Due: 5 p.m. ET 1/6/17.

Docket Numbers: ER17–568–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2016–12–16_Attachment X-Quarterly Operating Limits to be effective 2/15/2017.
Filed Date: 12/16/16.
Accession Number: 20161216–5155.
Comments Due: 5 p.m. ET 1/6/17.

Docket Numbers: ER17–569–000.
Applicants: National Choice Energy LLC.
Description: Baseline eTariff Filing: Baseline New to be effective 12/30/2016.

Filed Date: 12/16/16.
Accession Number: 20161216–5158.
Comments Due: 5 p.m. ET 1/6/17.

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: December 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–30835 Filed 12–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–14–000]

Midcontinent Independent System Operator, Inc.; Notice of Filing

Take notice that on December 15, 2016, Midcontinent Independent System Operator, Inc. submitted tariff filing per: Compliance Refund Report to be effective N/A, pursuant to the Federal Energy Regulatory Commission's (Commission) Letter Order issued to Indiana Municipal Power Agency on June 28, 2016.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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 January 5, 2017.

Dated: December 16, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–30850 Filed 12–21–16; 8:45 am]

BILLING CODE 6717–01–P

[1] *Indiana Municipal Power Agency,* 155 FERC ¶ 61,317 (2016).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–554–000]

Wolf Run Energy LLC: Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Wolf Run Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 5, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for 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.

Dated: December 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–30840 Filed 12–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–540–000]

Wildwood Solar II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Wildwood Solar II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 5, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for 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.

Dated: December 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–30838 Filed 12–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP17–262–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2017 Non-Leap Year Rates Correction to be effective 1/1/2017.
Filed Date: 12/15/16.
Accession Number: 20161215–5120.
Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: RP17–263–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Remove Non-conforming Agmt from Tariff (PSEG 661) to be effective 12/15/2016.
Filed Date: 12/15/16.
Accession Number: 20161215–5153.
Comments Due: 5 p.m. ET 12/27/16.

Docket Numbers: RP17–264–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: § 4(d) Rate Filing: Housekeeping Filing to be effective 2/1/2017.
Filed Date: 12/15/16.
Accession Number: 20161215–5224.
Comments Due: 5 p.m. ET 12/27/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–997–001.
Applicants: Enable Mississippi River Transmission, L.
Description: Compliance filing Compliance Filing in RP16–997–000 to be effective 12/15/2016.
Filed Date: 12/15/16.
Accession Number: 20161215–5189.
Comments Due: 5 p.m. ET 12/27/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–30837 Filed 12–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP17–261–000.
Applicants: Bear Creek Storage Company, L.L.C.
Description: Compliance filing Annual Fuel Assessment
Filed Date: 12/15/16
Accession Number: 20161215–5059
Comments Due: 5 p.m. ET 12/27/16

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: December 15, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–30836 Filed 12–21–16; 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: EC16–130–001.
Applicants: Nevada Power Company, Sierra Pacific Power Company, South Point Energy Center, LLC.

Description: Section 203 Market Power Mitigation Compliance Filing of Nevada Power Company, et. al.
Filed Date: 12/15/16.
Accession Number: 20161215–5303.
Comments Due: 5 p.m. ET 12/29/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1982–014; ER10–1253–013; ER10–1252–013; ER10–1246–013.
Applicants: Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Consolidated Edison Energy, Inc., Consolidated Edison Solutions, Inc.
Description: Triennial Market Power Analysis for the Northeast region of the Con Edison Companies.
Filed Date: 12/15/16.
Accession Number: 20161215–5306.
Comments Due: 5 p.m. ET 2/13/17.

Docket Numbers: ER16–1882–002; ER10–2882–032; ER10–2886–030; ER13–1101–025; ER13–1541–024; ER14–661–014; ER14–787–018; ER15–1475–009; ER15–2593–008; ER15–54–008; ER15–55–008; ER16–1154–006; ER16–452–008; ER16–705–006; ER16–706–006;ER17–252–002.
Applicants: Southern Power Company, Southern Turner Cimarron I, LLC, Boulder Solar Power, LLC, Spectrum Nevada Solar, LLC, Campo Verde Solar, LLC, SG2 Imperial Valley LLC, Macho Springs Solar, LLC, Lost Hills Solar, LLC, Blackwell Solar, LLC, North Star Solar, LLC, Desert Stateline LLC, Parrey, LLC, RE Tranquillity LLC, RE Garland A LLC, RE Garland LLC,2016 ESA Project Company, LLC.
Description: Notification of Non-Material of Change in Status of Boulder Solar Power, LLC, et al.
Filed Date: 12/15/16.
Accession Number: 20161215–5307.
Comments Due: 5 p.m. ET 1/5/17.

Docket Numbers: ER16–1969–002.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–12–15_Revisions to MISO–PJM JOA on coord of generator retirement studies to be effective 2/14/2017.
Filed Date: 12/15/16.
Accession Number: 20161215–5254.
Comments Due: 5 p.m. ET 1/5/17.

Docket Numbers: ER17–420–001.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: Tariff Amendment: 2016–12–16 553, 554, 565–NSP NOC Filing-Amnd to be effective 11/29/2016.
Filed Date: 12/16/16.
Accession Number: 20161216–5055.
Comments Due: 5 p.m. ET 1/6/17.

Docket Numbers: ER17–556–000.
Applicants: Grady Wind Energy Center, LLC.
Description: Initial rate filing: Application for Market-Based Tariff and Waivers to be effective 12/16/2016.
Filed Date: 12/15/16.
Accession Number: 20161215–5255.
Comments Due: 5 p.m. ET 1/5/17.

Docket Numbers: ER17–557–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Revisions to Added Facilities and Interconnection Agreement to be effective 4/1/2016.
Filed Date: 12/16/16.
Accession Number: 20161216–5002.
Comments Due: 5 p.m. ET 1/6/17.

Docket Numbers: ER17–558–000.
Applicants: Louisville Gas and Electric Company.
Description: § 205(d) Rate Filing: Revisions to Ancillary Services Schedules to be effective 2/15/2017.
Filed Date: 12/16/16.
Accession Number: 20161216–5034.
Comments Due: 5 p.m. ET 1/6/17.

Docket Numbers: ER17–559–000.
Applicants: Mid-Atlantic Interstate Transmission, LL, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits Agency Agreement No. 4593 among MetEd, Penelec and MAIT to be effective 1/1/2017.
Filed Date: 12/16/16.
Accession Number: 20161216–5044.
Comments Due: 5 p.m. ET 1/6/17.

Docket Numbers: ER17–560–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2016–12–16_RS 8 MISO-Manitoba Hydro SOA Resource Planning Revisions to be effective 2/15/2017.
Filed Date: 12/16/16.
Accession Number: 20161216–5049.
Comments Due: 5 p.m. ET 1/6/17.

Docket Numbers: ER17–561–000.
Applicants: Cedar Creek II, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 2/15/2017.
Filed Date: 12/16/16.
Accession Number: 20161216–5059.
Comments Due: 5 p.m. ET 1/6/17.

Docket Numbers: ER17–562–000.
Applicants: BP Energy Company.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 2/15/2017.
Filed Date: 12/16/16.
Accession Number: 20161216–5062.
Comments Due: 5 p.m. ET 1/6/17.

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: December 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–30834 Filed 12–21–16; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–XXXX]

Information Collection Being Submitted for Emergency Review and Approval to the Office of Management and Budget

AGENCY: Federal Communication Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (Commission or FCC), as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning: (a) Whether the proposed collection(s) of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection(s) of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for 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 Office of

Management and Budget (OMB) Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 12, 2017.

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 FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Kimberly Keravuori, Office of Management and Budget, via fax at 202–395–5167 or via email at *Kimberly_R_Keravuori@omb.eop.gov.* Also, please submit your PRA comments to the FCC by email at *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Nicole Ongele, Office of the Managing Director, FCC at (202) 418–2991.

SUPPLEMENTARY INFORMATION: The Commission is requesting that OMB approve this revised information collection under the emergency processing provisions of the PRA, 5 CFR 1320.13.

OMB Control Number: 3060–XXXX.

Title: Reverse Auction (Auction 1001) Incentive Payment Instructions from the Reverse Auction Winning Bidder.

Form Number: FCC Form 1875.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 750 respondents; 1,500 responses.

Estimated Time per Response: 2.5 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96 (Spectrum Act) § 6403(a)(1).

Total Annual Burden: 3,750 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The information collection includes information identifying bank accounts and providing account and routing numbers to access those accounts. FCC considers that information to be records not routinely available for public inspection under 47 CFR 0.457, and exempt from disclosure under FOIA exemption 4 (5 U.S.C. 552(b)(4)).

Needs and Uses: The Federal Communications Commission seeks emergency processing under the Paperwork Reduction Act (PRA), 5 CFR 1320.13. The Commission is requesting OMB approval for this new information collection. The Spectrum Act mandates ''a reverse auction to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights in order to make spectrum available for assignment through a system of competitive bidding''.[1] The Commission conducted notice-and-comment rulemaking to implement the Spectrum Act, and ruled in the Incentive Auction Report and Order that:

> ''we adopt the Commission's proposal to require successful bidders in the reverse auction to submit additional information to facilitate incentive payments As mentioned in the NPRM, we envision that the information would be submitted on standardized incentive payment forms similar to the Automated Clearing House (''ACH'') forms unsuccessful bidders in typical spectrum license auctions use to request refunds of their deposits and upfront payments. This information collection is necessary to facilitate incentive payments and should not be burdensome to successful bidders. Specifically, without further instruction and bank account information from successful bidders, the Commission would not know where to send the incentive payments.'' [footnotes omitted][2]

The information collection for which we are requesting approval is the standardized incentive payment form referred to in the paragraph above.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–30764 Filed 12–21–16; 8:45 am]

BILLING CODE 6712–01–P

[1] Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96 (Spectrum Act) § 6403(a)(1).

[2] Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12–268, Report and Order, 29 FCC Rcd 6567 (2014) (''Incentive Auction R&O'') at 537.

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0717]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, 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 February 21, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0717.

Title: Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77, 47 CFR Sections 64.703(a), 64.709, 64.710.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,418 respondents; 11,250,150 responses.

Estimated Time per Response: 1 minute (.017 hours)–50 hours.

Frequency of Response: Annual and on-occasion reporting requirements. Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at 47 U.S.C. 226, Telephone Operator Services, Pub. L. 101–435, 104 Stat. 986, codified at 47 CFR 64.703(a) Consumer Information, 64.709 Informational Tariffs, and 64.710 Operator Services for Prison Inmate Phones.

Total Annual Burden: 205,023 hours.

Total Annual Cost: $138,750.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impacts(s).

Needs and Uses: Pursuant to 47 CFR 64.703(a), Operator Service Providers (OSPs) are required to disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations, including any applicable surcharges. 47 CFR 64.710 imposes similar requirements on OSPs to inmates at correctional institutions. 47 CFR 64.709 codifies the requirements for OSPs to file informational tariffs with the Commission. These rules help to ensure that consumers receive information necessary to determine what the charges associated with an OSP-assisted call will be, thereby enhancing informed consumer choice in the operator services marketplace.

Authority: 44 U.S.C. 3501–3520

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–30762 Filed 12–21–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–XXXX]

Information Collection Being Submitted for Emergency Review and Approval to the Office of Management and Budget

AGENCY: Federal Communication Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (Commission or FCC), as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 12, 2017.

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 FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Kimberly Keravuori, Office of Management and Budget, via fax at 202–395–5167 or via email at *Kimberly_R_Keravuori@omb.eop.gov.* Also, please submit your PRA comments to the FCC by email at *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Nicole Ongele, Office of the Managing Director, FCC at (202) 418–2991.

SUPPLEMENTARY INFORMATION: Comments are requested concerning: (a) Whether the proposed collection(s) of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection(s) of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–XXXX.

Title: Payment Instructions from the Eligible Entity Seeking Reimbursement from the TV Broadcaster Relocation Fund.

Form Number: FCC Form 1876.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 1,000 respondents; 2,000 responses.

Estimated Time per Response: 3 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96 (Spectrum Act) § 6403(b)(4)(A).

Total Annual Burden: 6,000 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: The information collection includes information identifying bank accounts and providing account and routing numbers to access those accounts. FCC considers that information to be records not routinely available for public inspection under 47 CFR 0.457, and exempt from disclosure under FOIA exemption 4 (5 U.S.C. 552(b)(4)).

Needs and Uses: The Federal Communications Commission seeks emergency processing under the Paperwork Reduction Act (PRA), 5 CFR 1320.13. The Commission is requesting OMB approval for this new information collection. The Spectrum Act requires the Commission to reimburse broadcast television licensees for costs ''reasonably incurred'' in relocating to new channels assigned in the repacking process and Multichannel Video Programming Distributors (MVPDs) for costs reasonably incurred in order to continue to carry the signals of stations relocating to new channels as a result of the repacking process or a winning reverse auction bid.[1]

The Commission decided through notice-and-comment rulemaking that it will issue all eligible broadcasters and MVPDs an initial allocation of funds based on estimated costs, which will be available for draw down (from individual accounts in the U.S. Treasury) as the entities incur expenses, followed by a subsequent allocation to the extent necessary. The reason for allowing eligible entities to draw down funds as they incur expenses is to reduce the chance that entities will be unable to finance necessary relocation changes.[2]

The information collection for which we are requesting approval is necessary for eligible entities to instruct the Commission on how to pay the amounts the entities draw down, and for the entities to make certifications that

[1] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96 (Spectrum Act) § 6403(b)(4)(A)(i), (ii).

[2] Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12–268, Report and Order, 29 FCC Rcd 6567 (2014) (''Incentive Auction R&O'') at 609.

reduce the risk of waste, fraud, abuse and improper payments.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–30765 Filed 12–21–16; 8:45 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 4637—First National Bank of Keystone Keystone, West Virginia

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for First National Bank of Keystone, Keystone, West Virginia (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of First National Bank of Keystone on September 01, 1999. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to:

Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: December 19, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–30822 Filed 12–21–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10150—Pacific Coast National Bank San Clemente, California

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Pacific Coast National Bank, San Clemente, California (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Pacific Coast National Bank on November 13, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: December 19, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–30823 Filed 12–21–16; 8:45 am]

BILLING CODE 6714–01–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 January 17, 2017.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *T Acquisition, Inc.,* Plano, Texas; to become a bank holding company by acquiring 100 percent of T Bancshares, Inc., and therefore indirectly acquire T Bank, National Association, both of Dallas, Texas.

Board of Governors of the Federal Reserve System, December 19, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–30847 Filed 12–21–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) is adopting a proposal to revise, with extension for three years, the Capital Assessments and Stress Testing information collection (FR Y–14A/Q/M). The revisions are effective as of December 31, 2016, and December 31, 2017.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), to approve of and assign OMB numbers to collection of

information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3884. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: *Final approval under OMB delegated authority of the extension for three years, with revision, of the following information collection:*

Report title: Capital Assessments and Stress Testing information collection.

Agency form number: FR Y–14A/Q/M.

OMB control number: 7100–0341.

Frequency: Annually, semi-annually, quarterly, and monthly.

Effective Dates: December 31, 2016, or December 31, 2017.

Respondent type: The respondent panel consists of any top-tier bank holding company (BHC) or intermediate holding company (IHC) that has $50 billion or more in total consolidated assets, as determined based on: (i) The average of the firm's total consolidated assets in the four most recent quarters as reported quarterly on the firm's Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) (OMB No. 7100–0128); or (ii) the average of the firm's total consolidated assets in the most recent consecutive quarters as reported quarterly on the firm's FR Y–9Cs, if the firm has not filed an FR Y–9C for each of the most recent four quarters. Reporting is required as of the first day of the quarter immediately following the quarter in which it meets this asset threshold, unless otherwise directed by the Board.

Estimated annual reporting hours: FR Y–14A: Summary, 77,454 hours; Macro Scenario, 2,418 hours; Operational Risk, 702 hours; Regulatory Capital Transitions; 897 hours, Regulatory Capital Instruments, 819 hours; Retail Repurchase Exposures, 1,560 hours; Business Plan Changes, 390 hours; and Adjusted capital plan submission, 500 hours. FR Y–14Q: Retail, 2,496 hours; Securities, 2,184 hours; Pre-provision net revenue (PPNR), 110,916 hours; Wholesale, 23,712 hours; Trading, 46,224 hours; Regulatory Capital Transitions, 3,588 hours; Regulatory Capital Instruments, 8,112 hours; Operational risk, 7,800 hours; Mortgage Servicing Rights (MSR) Valuation, 1,728 hours; Supplemental, 624 hours; Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,792 hours; Counterparty, 12,192 hours; and Balances, 2,496 hours; FR Y–14M: 1st lien mortgage, 228,660 hours; Home Equity, 197,760 hours; and Credit Card, 153,000 hours. FR Y–14 On-going automation revisions, 18,720 hours. FR Y–14 Attestation implementation, 14,400 hours; and On-going audit and review, 30,720 hours.

Estimated average hours per response: FR Y–14A: Summary, 993 hours; Macro Scenario, 31 hours; Operational Risk, 18 hours; Regulatory Capital Transitions, 23 hours; Regulatory Capital Instruments, 21 hours; Retail Repurchase Exposures, 20 hours; Business Plan Changes, 10 hours and Adjusted capital plan submission, 100 hours. FR Y–14Q: Retail, 16 hours; Securities, 14 hours; PPNR, 711 hours; Wholesale, 152 hours; Trading, 1,926 hours; Regulatory Capital Transitions, 23 hours; Regulatory Capital Instruments, 52 hours; Operational risk, 50 hours; MSR Valuation, 24 hours; Supplemental, 4 hours; Retail FVO/HFS, 16 hours; Counterparty, 508 hours; and Balances, 16 hours; FR Y–14M: 1st Lien Mortgage, 515 hours; Home Equity, 515 hours; and Credit Card, 510 hours. FR Y–14 On-Going automation revisions, 480 hours. FR Y–14 Attestation Implementation, 4,800 hours; and On-going audit and review, 2,560 hours.

Number of respondents: 39.

Legal authorization and confidentiality: The FR Y–14 series of reports are authorized by section 165 of the Dodd-Frank Act, which requires the Board to ensure that certain BHCs and nonbank financial companies supervised by the Board are subject to enhanced risk-based and leverage standards in order to mitigate risks to the financial stability of the United States (12 U.S.C. 5365). Additionally, section 5 of the Bank Holding Company Act authorizes the Board to issue regulations and conduct information collections with regard to the supervision of BHCs (12 U.S.C. 1844).

With regard to the CFO-level attestation requirement, which is intended to improve accountability and accuracy and heighten requirements for internal control, the Board has provided sufficient description and justification to require such attestation from respondents, consistent with the aforementioned statutory authorities.

As these data are collected as part of the supervisory process, they are subject to confidential treatment under exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, commercial and financial information contained in these information collections may be exempt from disclosure under exemption 4 of FOIA (5 U.S.C. 552(b)(4)), if disclosure would likely have the effect of (1) impairing the government's ability to obtain the necessary information in the future, or (2) causing substantial harm to the competitive position of the respondent. Such exemptions would be made on a case-by-case basis.

Abstract: The data collected through the FR Y–14A/Q/M schedules provide the Board with the additional information to ensure that large BHCs have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The annual Comprehensive Capital Analysis and Review (CCAR) exercise also is complemented by other Board supervisory efforts aimed at enhancing the continued viability of large BHCs and IHCs, including continuous monitoring of BHCs' and IHCs' planning and management of liquidity and funding resources and regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of these financial institutions. In order to fully evaluate the data submissions, the Board may conduct follow up discussions with or request responses to follow up questions from respondents, as needed.

The Capital Assessments and Stress Testing information collection consists of the FR Y–14A, Q, and M reports. The semi-annual FR Y–14A collects quantitative projections of balance sheet, income, losses, and capital across

a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[1] The quarterly FR Y–14Q collects granular data on various asset classes, including loans, securities, and trading assets, and pre-provision net revenue (PPNR) for the reporting period. The monthly FR Y–14M comprises three retail portfolio- and loan-level collections, and one detailed address matching collection to supplement two of the portfolio and loan-level collections.

Current Actions: On July 28, 2016, the Board published a notice in the **Federal Register** (81 FR 49653) requesting public comment for 60 days on the proposal to extend, with revision, the FR Y–14A/Q/M. The Board proposed revisions to general FR Y–14 requirements and several schedules of the FR Y–14A/Q/M reports. For reports as-of December 31, 2017, the proposed changes included requiring that U.S. IHCs that are part of the Large Institution Supervision Coordinating Committee (LISCC) framework (''LISCC U.S. IHCs'') attest to the material correctness and conformance to instructions of, and internal controls around, the data reported on the FR Y–14A/Q/M reports.[2] For reports as-of December 31, 2016, the revisions would add a requirement for BHCs and IHCs electing to undertake planned capital adjustments or incremental capital distribution requests to provide updated submissions of the FR Y–14A Schedule A (Summary—Capital) and Schedule C (Regulatory Capital Instruments, RCI) reflecting these adjustments (as detailed below). Finally, the revisions would update the FR Y–14A, Schedule A.1.d. (Summary—Capital) to collect items related to the supplementary leverage ratio (SLR), remove and add sub-schedules to the FR Y–14A Schedule E (Operational Risk) to align with applicable guidance, add one item to Schedule A.5 (Summary—Counterparty), and modify items on the FR Y–14A/Q/M reports to address inconsistencies across schedules and ensure the collection of accurate information.

The FR Y–14A Schedule A.1.d. (Summary—Capital) would be revised for December 31, 2016, to (1) add certain items used to calculate the SLR in alignment with the Board's extension of the initial application of the SLR requirement in the capital plan rule;[3] (2) modify two items; and (3) remove one item. In addition, one item to capture Other Counterparty Losses would be added to Schedule A.5 (Summary—Counterparty) effective December 31, 2016. Finally, Schedule E (Operational Risk) would be revised for December 31, 2016, to (1) remove sub-schedule E.1, BHC Operational Risk Historical Capital, (2) add two new sub-schedules: E.2, Material Risk Identification and E.3, Operational Risk Scenarios, and (3) update outdated methodologies and references.

The FR Y–14Q (quarterly collection) would be revised for December 31, 2016, to add a new column to Schedule B (Securities) to collect the price of the security as a percent of par to enhance supervisory modeling.

Finally, the FR Y–14M (monthly collection) would be revised for December 31, 2016, to modify the definition of Gross Charge-Off Amount on Schedule D (Credit Cards) in order to ensure proper reporting across institutions.

The comment period for this notice expired on September 26, 2016. The Federal Reserve received three comment letters addressing the proposed changes: One from the Financial Services Roundtable, one from The Clearing House, and one from the Federal Advisory Council. Commenters requested clarification of the instructions, forms, or general requirements for proposed items, in particular the operational risk modifications to the FR Y–14A, Schedule E.2 and E.3. The Federal Reserve also received general comments regarding (1) the frequency of changes and stability of the collection, (2) timing of release of technical instructions, and (3) estimates of reporting burden.

No comments were received specifically related to the modifications to the FR Y–14A Schedule A.5, FR Y–14Q Schedule B, or FR Y–14M Schedule D. Therefore the Federal Reserve will proceed with the aforementioned changes effective December 31, 2016. Furthermore, no comments were received on the proposed application of attestation to LISCC US IHCs. The Federal Reserve will apply the attestation requirement to LISCC US IHCs effective December 31, 2017. The Federal Reserve will adopt the remaining reporting requirements as proposed, with revisions in response to comment, as outlined below.

The following section includes a detailed discussion of aspects of the proposed FR Y–14 collection for which the Federal Reserve received substantive comments and an evaluation of, and responses to the comments received. Where appropriate, responses to these comments and technical matters are also addressed in the attached draft FR Y–14A/Q/M reporting forms and instructions.

Detailed Discussion of Public Comments

A. General Comments

In general, commenters expressed concerns with the timing of implementing changes and the frequency of changes to the FR Y–14 series of reports. Two commenters indicated that additional time before the implementation of changes would be needed to allow for the development of internal processes and procedures, and integration of changes, and to materially improve the FR Y–14 data collection. Specifically, consistent with previously submitted comments, the Financial Services Roundtable requested a minimum of six months between the finalization of all reporting and technical requirements and the effective date, and a reduction in the frequency of changes. Both the Financial Services Roundtable and the Clearing House requested earlier publication of technical instructions and the ability to address clarifying questions before adoption of any final rule or the effective date of the changes. Both organizations expressed their willingness to continue to work with the Federal Reserve on addressing these issues. Finally, the Federal Advisory Council encouraged stability in the reporting requirements as continued iterations and modifications necessitate the utilization of manual processes to meet filing deadlines.

As previously indicated, the Federal Reserve recognizes the challenges with implementing changes in a timely and controlled manner, especially when the changes are finalized close to the effective date.[4] The Federal Reserve continues to weigh the need to collect additional information or benefits of enhancing the collection in light of the proposed effective date with the objective of providing as much time as is feasible in advance of implementation. The Federal Reserve has engaged the industry in ongoing dialogue regarding several of the specific recommendations contained in these letters and continues to assess these recommendations. In response to these comments, the Federal Reserve

[1] BHCs that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

[2] Further information regarding the LISCC designation is available on the Board's public Web site: *http://www.federalreserve.gov/bankinforeg/large-institution-supervision.htm.*

[3] *See* 12 CFR 225.8(c)(3), 12 CFR 252.53(b)(3).

[4] See, *e.g.,* 79 **Federal Register** 59264.

will revisit these discussions and consider additional ways to further engage the industry throughout the process in order to improve the transparency and clarity surrounding proposed changes.

In regards to the proposed changes contained in this notice, the Federal Reserve notes that the changes related to collecting components of SLR on the FR Y–14A Schedule A (Summary—Capital) align with related changes to the rule and allow for the incorporation of regulatory elements into the stress test as required. The inclusion of the requirement to submit certain FR Y–14 schedules to collect information on adjustments to planned capital actions and incremental capital distribution from firms that have elected to make such adjustments formalizes the process and format by which firms undertaking such actions would be providing the information. It is expected, therefore, that firms could leverage existing processes and controls for collecting and reporting this information given that regardless of the collection method, this information would be provided. Similarly, the information collected on proposed FR Y–14A, Schedules E.2 and E.3, would otherwise be provided as part of the supporting documentation submitted by a firm subject to SR Letter 15–18. Furthermore, the Federal Reserve has engaged the industry regarding the expectations outlined in SR Letter 15–18, and the requirements remain largely the same as proposed. Therefore, the Federal Reserve will not delay the implementation of these proposed changes given they are consistent with recent supervisory guidance or replace collections of the same or similar information through other methods or processes.

Other changes with a December 31, 2016, implementation date are clarifying in nature, streamline the instructions, address industry feedback, or remove information. These include the remaining changes to the FR Y–14A, Schedule A.1.d (Summary—Capital), the changes to the FR Y–14A, Schedule A.6 (Ops Risk) which align with updated methodology, the elimination of the FR Y–14A, Schedule E.1, and the definitional change to the FR Y–14M, Schedule D (Credit Cards). Given these changes will reduce burden and address reporting issues to alleviate confusion and inconsistent reporting for the CCAR cycle and do not involve the collection of new information, these changes will be implemented with a December 31, 2016, effective date.

While the collection of other losses on the FR Y–14A, Schedule A.5 (Summary—Counterparty) results in the collection of additional information for which internal processes and controls need to be developed, the Federal Reserve reiterates that this information was previously collected. Draft forms and instructions were provided with the publication of the initial notice and remain the same as proposed. No comments were received specifically regarding this change, therefore the Federal Reserve will implement this change as proposed.

Finally, the addition of the column for ''Price'' on the FR Y–14Q, Schedule B (Securities) addresses inconsistencies in reporting identified in prior reporting periods. As noted in the proposal, the data currently collected on the FR Y–14 leaves data gaps that can result in outdated information and ultimately reduced accuracy of modeling. While the Federal Reserve understands that the collection of new information close to the effective date results in process challenges, delaying the collection of price information could result in the need for resubmissions in the short term. The Federal Reserve indicated in the initial notice that they understood these data to be readily available on the as of date, and no comments were received specifically indicating challenges with collecting the information necessary for this proposed change. Therefore, the Federal Reserve will implement this change as proposed.

In response to the Federal Reserve's solicitation for feedback regarding burden associated with the FR Y–14A/Q/M, the Financial Services Roundtable noted that dialogue regarding the estimates of burden associated with the FR Y–14 collection with Federal Reserve staff is ongoing. The Federal Reserve regularly reviews burden estimates and discussions with industry groups, including the Financial Services Roundtable, regarding FR Y–14 burden are ongoing.

B. Schedule Specific Comments

FR Y–14A

Schedule A.1.d. (Capital)

The Federal Reserve received two requests for clarification related to the proposed modifications requiring firms to estimate the SLR for the projection horizon beginning January 1, 2018, for baseline and stress scenarios, in accordance with revisions to the capital plan and stress test rules, and report these ratios on Schedule A.1.d. The requests related to the application of this requirement to both BHCs and IHCs.

Specifically, one industry group commented that the inclusion of this information on the FR Y–14A, Schedule A (Summary) suggests that the Federal Reserve will require institutions' projections to remain above the regulatory minimum on a post-stress basis beginning January 1, 2018, and going forward in order to quantitatively pass the Comprehensive Capital Analysis and Review (CCAR), implying an accelerated effective date from January 1, 2018, to December 31, 2016. Accordingly, the commenter asked the Federal Reserve to clarify that information regarding the SLR would be collected for informational purposes only on the FR Y–14A Summary Schedule as of December 31, 2016, and that banks would not be expected to meet the post stress supplementary minimum for purposes of the 2017 CCAR. The commenter also asked the Federal Reserve to confirm this would be informational and on a best efforts basis for IHCs of FBOs and that they would not be expected to meet leverage or supplementary leverage post stress minima for CCAR 2017.

Bank holding companies (BHCs) must maintain capital above each minimum regulatory capital ratio on a pro forma basis throughout the planning horizon. The capital plan rule defines minimum regulatory capital ratio to include the SLR.[5] Under the 2015 amendment to the capital plan rule, the Board delayed the incorporation of the SLR requirement in the capital plan and stress test rules for one year, until 2017.[6] Accordingly, for the 2017 capital plan and stress test cycle, BHCs subject to the SLR will be required to maintain capital above a minimum three (3) percent SLR on a pro forma basis for quarters of the planning horizon beginning January 1, 2018, which corresponds with the fifth projection quarter of the CCAR 2017 exercise.

Under the capital plan rule and stress test rules, all regulatory capital ratios are calculated using the definitions of capital, risk-weighted assets, and total assets that are in effect during a particular quarter of a planning horizon.[7] For example, the Federal Reserve required firms to meet minimum common equity tier 1 ratio requirements, which came into effect on January 1, 2015, beginning in the fourth projection quarter of CCAR 2014.

Similarly, both the leverage and supplementary leverage requirements become effective for the IHCs of foreign banking organizations (FBOs) on January 1, 2018. In CCAR 2017,

[5] See 12 CFR 225.8(d)(8).

[6] See 80 FR 75419, 75421 (December 2, 2015), 12 CFR 225.8(c)(3)).

[7] *See* Comprehensive Capital Analysis and Review 2016 Summary Instructions (January 2016), p. 3.

beginning with quarters that correspond to dates after January 1, 2018 (*i.e.* the fifth quarter of the CCAR 2017 planning horizon), each U.S. IHC will be required to calculate the tier 1 leverage ratio and the SLR and demonstrate in the IHC's own baseline and stress projections that it can maintain capital above a minimum four (4) percent tier 1 leverage ratio and three (3) percent SLR. Notably, however, for an IHC designated by an FBO that was not a BHC previously subject to CCAR, the IHC will not be subject to the supervisory stress test or public objection to its 2017 capital plan. For CCAR 2018, all IHCs will be subject to all aspects of CCAR, including the supervisory stress test, public disclosure of results, and public notice of the Federal Reserve's action on each IHCs capital plan. In CCAR 2018, leverage requirements will be in effect for all quarters of the planning horizon.

Given the alignment with the capital plan and stress testing rules as outlined above, the modifications to the FR Y–14A, Schedule A.1.d (Summary—Capital), will be implemented as proposed for reports submitted as of December 31, 2016. No further comments were received regarding the other proposed changes to the FR Y–14A, Schedule A.1.d (Summary—Capital) and these changes will also be implemented as proposed.

Schedule A.6 (BHC Operational Risk Scenario Inputs and Projections)

Two commenters requested clarification regarding the change of the column heading from ''Unit of Measure'' to ''Risk Segment'' in the FR Y–14A, Schedule A.6 and associated instructions. First, one commenter asked whether there was an expectation that respondents use classifications other than Basel event types in the reporting of the risk segment. The Federal Reserve clarifies that large and complex firms should use risk segments that best describe the risks to which they are exposed. Classifications other than the current Units of Measure are acceptable and in some cases may be preferable to more clearly link the methodologies used to measure those risks for both day-to-day business operations and to estimate post-stress capital needs.

Second, the other commenter inquired as to whether the change in heading would also result in a change in the definition of the reported column. Specifically, the commenter asked whether (i) the definition of Risk Segment to be used is the same definition for Risk Segment contained in the prior instructions (*i.e.,* ''the BHC's internal classification of operational risk into granular risk categories used for risk management and operational risk loss projection purposes''), (ii) the prior definition of Unit of Measure should be applied (*i.e.,* ''the level at which the BHC's quantification model generates a separate distribution for estimating potential operational losses''), or (iii) an alternate definition of Risk Segment should be applied. The Federal Reserve confirms that the definition of Risk Segment to be used is the same definition for Risk Segment contained in the prior instructions and as indicated in the draft instructions associated with this notice (*i.e.,* ''the BHC's internal classification of operational risk into granular risk categories used for risk management and operational risk loss projection purposes''). Because this definition is already contained in the instructions, the change will be implemented as proposed.

Schedule C (RCI)

Under the proposed revisions to the FR Y–14A, firms would be required to resubmit the FR Y–14A, Schedule C for incremental capital action requests at the time a firm seeks approval for or notifies the Federal Reserve of its intention to make additional capital distributions in the period between CCAR exercises. While the commenter expressed support for the Federal Reserve's objective of formalizing a standard process for firms to submit information regarding requests for additional capital distributions in the period between CCAR exercises, the commenter requested that the Federal Reserve institute a threshold, below which firms would not need to resubmit the FR Y–14A, Schedule C (RCI) as part of the request. The commenter indicated that this would enable firms to make small incremental distributions without requiring the internal processes and control structure otherwise needed to resubmit the template outside of the annual CCAR process.

The Federal Reserve reiterates that firms may not exceed the distributions included in their capital plan on a gross or net basis. As such, a firm seeking to make incremental capital distributions must notify the Federal Reserve (in the case of a de minimis incremental distribution) or request approval (in the case of incremental distributions that do not qualify for the de minimis exception for well capitalized firms). In any case where a firm seeks to make incremental distributions it is important that the Federal Reserve have up to date information on the firm's capital plan. As such, the Federal Reserve does not believe such a threshold is appropriate and will implement the requirement as proposed.

Schedules E (Operational Risk)

Several of the changes proposed to the FR Y–14A, Schedule E (Operational Risk) were consistent with the guidance and expectations contained in recent supervisory letters, notably SR Letter 15–18. SR Letter 15–18 sets out the differences in expectations for U.S. bank holding companies and intermediate holding companies of foreign banking organizations that are either: (i) Subject to the Federal Reserve's Large Institution Supervision Coordinating Committee (LISCC) framework or (ii) have total consolidated assets of $250 billion or more or consolidated total on-balance sheet foreign exposure of $10 billion or more (''Large and Complex firms''). Two commenters requested clarification as to whether the proposed changes to the FR Y–14A, Schedule E were intended to apply to all BHCs and IHCs, or only to those institutions subject to SR Letter 15–18. The Federal Reserve confirms that the additional sub-schedules proposed for the FR Y–14A Schedule E would apply only to BHCs and IHCs subject to SR Letter 15–18, in alignment with the guidance outlined therein; however, notes that the elimination of Schedule E.1 would apply for all firms.

The Federal Reserve proposed adding a new sub-schedule, Schedule E.2 Material Risk Identification, to capture material operational risks included in a firm's projections. Two commenters requested additional clarification on the information to be captured in this sub-schedule. One commenter requested guidance regarding the definition of ''material'' operational risks, as the subjective application of materiality may lead to varying definitions across organizations. The commenter also questioned at what point organizations not just include Basel Loss Event Type I as their material operational risks and if additional guidance would be provided on quantifying risks that do not have a one-to-one (1:1) match of risk to dollars (*e.g.,* those implicitly captured in the estimates through historical losses experienced).

The Federal Reserve expects large and complex firms to maintain capital planning processes that capture or otherwise consider the full range of material risks facing the firm. A firm should identify how and where its material risks are accounted for within the capital planning process. The Federal Reserve expects a firm to seek input from multiple stakeholders across the organization (for example, senior management, finance and risk

professionals, front office and line-of-business leadership) in identifying its material risks. Materiality thresholds should be established at multiple levels of the BHC and include: (1) Easily quantifiable risks, and (2) risks that are more difficult to quantify. The specifics of the risk identification process will differ across firms given differences in organizational structure, business activities, and size and complexity of operations. However, the risk identification process at all firms subject to this guidance should be dynamic, inclusive, and comprehensive, and drive the firm's capital adequacy analysis. A firm should: (1) Evaluate material risks across the enterprise to ensure comprehensive risk capture on an ongoing basis; (2) establish a formal risk identification process and evaluate material risks at least quarterly; (3) actively monitor its material risks; and (4) use identified material risks to inform key aspects of the firm's capital planning, including the development of stress scenarios, the assessment of the adequacy of post-stress capital levels, and the appropriateness of potential capital actions in light of the firm's capital objectives.

Regarding risks that do not have a 1:1 match of risk to dollars, firms should have transparent and well-supported estimation approaches based on both quantitative analysis and expert judgment, and should not rely on unstable or unintuitive correlations to project operational losses. Scenario analysis should be a core component of the firm's operational loss projection approaches. Certain operational risks, particularly those most likely to give rise to large losses, often may not have measureable relationships to the overall scenario conditions. In addition, large operational loss events are often idiosyncratic, limiting the relevance of historical data.

The other commenter suggested that rather than create a new template to capture material operational risks that are included in a firm's risk projections, as well as those excluded from the firm's risk projections, the Federal Reserve continues to refer to the CCAR supporting documentation for a discussion of operational risks provided that the supporting documentation conforms with all Federal Reserve requirements. By collecting this information in a structured way via the new FR Y–14 sub-schedule, the Federal Reserve expects to ensure a clear and consistent reporting of material risks, including a transparent reconciliation of which risks are included or excluded from the projections. The supporting documentation should, among other things, provide a description of the process(es) employed to identify, select and/or exclude risks from the reported projections.

Several comments were received regarding the draft forms and instructions associated with the proposed FR Y–14A, Schedule E.2. First, commenters requested additional clarification as to the Federal Reserve's expectations with respect to the reporting of Material Risks in Schedule E.2, particularly as to the intended definitions of ''Risk Name'', ''Risk Segment'' and ''BHC Stress Projection Amount'' in this schedule.

As indicated in the draft instructions and consistent with other instructions for this schedule, the Federal Reserve does not intend to provide specific definition for these terms. Each firm uses its unique methodology for each identified material risk as well as its risk segment. Risk segmentation and resulting material risks vary based on business mix, risk profile and risk drivers. Therefore the Federal Reserve does not expect a standard taxonomy for reporting purposes. Risk Name is the firm's taxonomy for a given material risk. Risk Segment is the firm's chosen taxonomy for risk segmentation/risk categorization.

Second, in order to better conform the items as proposed in the draft forms and consistent with the item description, the commenter requested the addition of ''Operational'' before ''Risk(s)'' to the (i) title of the schedule, (ii) header of the first column in the schedule, and (iii) descriptions below the aforementioned header on Schedule E.2. Consistent with the request regarding the insertion of the word ''Operational'' into the appropriate locations on Schedule E.2, the commenter also suggested the addition of the words ''Operational Risk'' to each of the names of the columns in Schedule E.3, as well as to the lines for ''percentage of the loss estimates'' and ''total number of scenarios.'' The forms will be updated as suggested.

In regards to Schedule E.3, the commenter requested the addition of the word ''9-Qtr Projection'' after ''BHC Baseline'' and ''BHC Stress'' to clarify that the total nine quarter projections are the information being sought on this schedule. To further clarify the column titles in schedule E.3, ''Nine-Quarter Loss Projection'' will be added after ''BHC Base Line'' and after ''BHC Stress.''

Finally, one commenter requested additional clarity surrounding expectations for the information to be reported under the column ''Methodology for applying scenario results'' on the proposed FR Y–14A, Schedule E.3. The Federal Reserve clarifies that the intent of this column is for the firm to note the name of methodology used to quantify losses using the Scenario approach. For example, quantitative model, historical averages, estimate based on expert judgment, etc.

The changes to the FR Y–14A, Schedule E (Operational Risk) will be implemented as of December 31, 2016, with the revisions noted above.

FR Y–14Q

Schedule H.1 (Corporate Loan)

In addition to the comments specific to the proposed changes contained in the initial notice, the Federal Reserve also received two comments regarding the reporting of syndicated pipelines and disposition activity on Schedule H.1 (Wholesale—Corporate), to which no changes were proposed. The commenter inquired as to when the Federal Reserve would provide draft and/or final technical instructions for the third quarter 2016 reporting requirements on Syndicated Finance Pipeline Reporting and Disposition Activity. Technical instructions for the third quarter were posted to the public Web site on October 17, 2016.

The commenter also questioned whether the Federal Reserve would provide an interim exemption on having to provide responses to edit check exceptions for these new reporting requirements similar to what was done for the 2Q 2016 Fronting Exposure edit checks, which did not require responses until 4Q 2016. The Federal Reserve emphasizes the value of edit checks for both firms and the Federal Reserve in ensuring data quality, particularly for newly reported items. The final notice adopting these changes delayed the implementation of these requirements an additional quarter (to be effective as of September 30, 2016), in order to allow firms additional time to prepare for the reporting of these exposures.[8] Therefore, exemptions to edit checks responses on these reporting requirements are not planned at this time.

Board of Governors of the Federal Reserve System, December 19, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–30855 Filed 12–21–16; 8:45 am]

BILLING CODE 6210–01–P

[8] See 81 **Federal Register** 3412.

FEDERAL RESERVE SYSTEM

[Docket No. OP—1557]

Proposed Guidelines for Evaluating Joint Account Requests, Request for Comments

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is requesting comment on proposed guidelines to evaluate requests for joint accounts at Federal Reserve Banks (Reserve Banks) by private-sector arrangements within the U.S. payment system. Under the Federal Reserve Act (FRA), Reserve Banks have the authority to open accounts for member banks and other eligible depository institutions. The Reserve Banks typically permit a single master account per eligible institution but have, in limited cases, opened joint accounts for specific uses. Given the potential for this type of account to be of interest to payment system participants, the Board proposes to establish guidelines to be considered in evaluating requests for joint accounts to facilitate settlement for payment systems in the United States. The Board seeks comment on all aspects of the proposed guidelines.

DATES: Comments on the proposed guidelines must be received on or before February 21, 2017.

ADDRESSES: You may submit comments, identified by Docket No. OP–1557, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 3515, 1801 K Street NW. (between 18th and 19th Street NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Susan V. Foley, Senior Associate Director (202–452–3596), Kylie Stewart, Manager (202–245–4207), or Ian C.B. Spear, Senior Financial Services Analyst (202–452–3959), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System; for users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Section 13(1) of the FRA authorizes each Reserve Bank to ''receive from any of its member banks or other depository institutions . . . deposits of current funds in lawful money.'' [1] The Reserve Banks routinely open and maintain individual Federal Reserve accounts for eligible institutions. The Reserve Banks have also, in limited cases, opened joint accounts for specific purposes, including conducting settlement for payment systems. A joint account is held for the benefit of multiple depository institution account holders. Currently, the Reserve Banks maintain two joint accounts to facilitate settlement between users of private-sector payment services operated by The Clearing House (TCH): One to facilitate wholesale payments through the Clearing House Interbank Payments System (CHIPS) and another to facilitate TCH's Universal Payment Identification Code (UPIC) service for ACH payments.[2] Both of these joint accounts are long-standing, with the more recent account being established approximately 15 years ago. The Reserve Banks do not offer joint accounts as a standard available account option, and consistent with the Reserve Banks' authority under the FRA, institutions seeking to collectively establish a joint account at a Reserve Bank must individually satisfy the FRA's eligibility requirements to establish a Federal Reserve account.

For purposes of the proposed guidelines, the joint account would be held for the benefit of ''joint account holders,'' that is, depository institutions that are eligible to open an account with a Reserve Bank and that under the rules of a private-sector payment system are either required or permitted to be one of the joint account holders. Each of the joint account holders authorizes a single entity to serve as the ''agent'' for the joint account holders with respect to the account and to provide instructions with respect to the joint account.[3] As in the case of the existing joint accounts, the account-holding Reserve Bank would be authorized to act on any instruction provided by the agent, consistent with the security procedures and other provisions of the joint account agreement.[4] In addition, and also consistent with existing practice, the joint account holders would indemnify the account-holding Reserve Bank jointly and severally for losses related to the Reserve Bank's operation of the joint account. The ''operator'' of the private-sector arrangement, which could be the agent of the joint account or a separate entity, would provide the clearing services for, and typically serve as the source for the positions of, the participants in the private-sector arrangement. ''Participants'' could include joint account holders, as well as other depository institutions and nondepository institutions that are directly part of the private-sector arrangement's payment system.

Given the ongoing evolution of the U.S. payment system, there may be broader interest in establishing joint accounts to facilitate settlement on the part of market participants. For instance, as part of the Board's and Reserve Banks' (collectively the Federal Reserve's) *Strategies for Improving the U.S. Payment System* efforts, the Federal Reserve is facilitating a multiyear collaborative effort to support the desired outcome of ''a ubiquitous, safe, faster electronic solution for making a broad variety of business and personal payments supported by a flexible and cost-effective means for payment clearing and settlement groups to settle their positions rapidly and with

[1] 12 U.S.C. 342.

[2] CHIPS is a multilateral netting system that continuously settles wholesale payments between two or more participating institutions.

TCH offers a UPIC service that enables its customer's end users to provide payment instructions to third parties without disclosing their bank account information and enables such end users to change banking relationships without needing to notify each payor of the change (the UPIC remains the same). The joint account for UPIC transactions enables the settlement of ACH credit transactions using UPICs when the transactions are sent by customers of the Reserve Banks' FedACH service and destined for participants in TCH's UPIC service.

[3] Joint account holders must authorize the same agent as a condition of being a joint account holder, but any joint account holder may withdraw from the joint account with appropriate notice. Although joint account holders must be eligible depository institutions, the designated agent of the private-sector arrangement would not need to be a depository institution.

[4] Rules and agreements among the parties would determine what obligations the agent has to the joint account holders with respect to instructions initiated by the agent.

finality.'' [5] To help foster this outcome, the Federal Reserve in 2015 established the Faster Payments Task Force (Task Force), consisting of diverse payment industry stakeholders, to identify effective approaches to implementing safe, ubiquitous, faster payments capabilities in the United States.

The Task Force developed a process whereby proposals for safe, ubiquitous, faster payment capabilities (''faster retail payment systems'') could be assessed by a qualified independent assessment team and the Task Force against the *Faster Payments Effectiveness Criteria* developed by the Task Force.[6] As part of this process, the Federal Reserve made proposers aware that they could discuss Reserve Bank services, such as settlement options, with Federal Reserve representatives if they had an interest in using those services to facilitate their proposed faster retail payment systems. Federal Reserve staff received one request from an organization to open a joint account to facilitate settlement to support that organization's proposed faster retail payment system.

The Board recognizes that other potential providers may contemplate similar account arrangements or might reconsider their options for settlement capabilities if they understood better the availability of joint accounts. The Board therefore proposes to establish guidelines for evaluating requests for joint accounts to facilitate settlement. In particular, a private-sector arrangement may seek a joint account model, in certain instances, to facilitate near credit-risk-free settlement in support of its payment system. Today, the credit-risk-free settlement of U.S. dollar payment, clearing, and settlement systems typically requires the Reserve Banks to make the appropriate debits and credits to accounts on their books. Under one potential joint account model, each participant in the private-sector arrangement would rely on the presence of balances held in a Federal Reserve account to obtain certainty that transactions settled via the arrangement are ultimately backed by funds on deposit at the central bank.[7]

II. Discussion of Proposed Guidelines

The Board proposes the following guidelines to evaluate requests for joint accounts by a private-sector arrangement within the U.S. payment system. The proposed guidelines are intended to broadly outline considerations necessary for evaluating such requests. Requests would be evaluated on a case-by-case basis, and evaluating a particular request would likely require more-specific considerations and information based on the complexity of the arrangement and other factors.

1. Each Joint Account Holder Must Meet All Applicable Legal Requirements To Have a Federal Reserve Account, and the Reserve Bank Will Not Have Any Obligation to Any Non-Account Holder With Respect to the Funds in the Account

Only an institution that is eligible to have a Federal Reserve account under the FRA and applicable Federal Reserve rules, policies, and procedures is able to be a joint account holder. Section 13(1) of the FRA permits Reserve Banks to receive deposits from member banks or other depository institutions.[8] Section 19(b)(1)(A) further defines depository institutions to include any insured bank, any mutual savings bank, any savings bank, any savings association as defined in the Federal Deposit Insurance Act, any insured credit union as defined in the Federal Credit Union Act, and those entities that are eligible to ''make application to become'' a federally insured institution.[9] As a result, unless otherwise specified by statute, only those entities that meet the definition of a depository institution are legally able to obtain Federal Reserve accounts and payment services.[10] All other nondepository institutions are ineligible for accounts and payment services. Moreover, as part of evaluating any joint account requests, and consistent with Federal Reserve policies and procedures, the account-holding Reserve Bank must approve all joint account holders that are part of a proposed private-sector arrangement.[11] Consistent with the limits on the Reserve Banks' deposit-taking authority, a Reserve Bank's obligation with respect to any funds in a joint account will be limited to the joint account holders, and no non-account holders may have any rights against the Reserve Bank with respect to those funds.

2. The Private-Sector Arrangement Must Demonstrate That It Has a Sound Legal and Operational Basis for Its Payment System

The private-sector arrangement must have a sound legal and operational basis for its payment system, including an effective legal framework for achieving settlement finality. The arrangement must have analyzed the application of U.S. sanction programs, Bank Secrecy Act and anti-money-laundering requirements or regulations, and other laws and regulations (including the Electronic Funds Transfer Act) as applicable, and must have established appropriate compliance procedures. The private-sector arrangement must provide an analysis of the attachment risk related to the account and the impact of participant insolvency on the account, as well as have policies and procedures to minimize disruption to its system when one of its participants, the agent, or the operator fails, when fraudulent activity occurs, or in the event of operational failures. Requestors of a joint account will likely be required to provide supporting legal analysis as well as the system's rules, agreements, and other governing documents.

An evaluation under this guideline will take into account the applicable supervisory framework for the private-sector arrangement, including the agent, the operator, and the participants.[12] The

[5] The *Strategies for Improving the U.S. Payment System* paper was published in January 2015, and is available at *https://fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf.*

[6] The Task Force's *Faster Payments Effectiveness Criteria* is available at *https://fedpaymentsimprovement.org/wp-content/uploads/fptf-payment-criteria.pdf.* The Federal Reserve contracted with an external firm to support the Task Force efforts to perform a qualified independent assessment of the faster payments solution proposals (*https://fedpaymentsimprovement.org/news/press-releases/fre-in-effort-to-assess-faster-payments/*). The faster retail payments solutions provided to the qualified independent assessment team and the Task Force are considered confidential within the process established by the Task Force. The Task Force intends to release a final report mid-2017, which will contain the proposals and assessments for those organizations that agree to be included in that report.

[7] Other potential models are also offered by the Reserve Banks, for example the Reserve Banks' National Settlement Service, *https://www.frbservices.org/nationalsettlement/index.html.*

[8] 12 U.S.C. 342.

[9] 12 U.S.C. 461(b).

[10] There are certain statutory provisions allowing Reserve Banks to act as a depository and fiscal agent for the Treasury and certain government-sponsored entities (*See i.e.,* 12 U.S.C. 391, 393–95, 1823, 1435) as well as for certain international organizations (*See i.e.,* 22 U.S.C. 285d, 286d, 290o–3, 290i–5, 290l–3). In addition, Reserve Banks are authorized to offer deposit accounts to designated financial market utilities (12 U.S.C. 5465), Edge and Agreement corporations (12 U.S.C. 601–604a, 611–631), branches or agencies of foreign banks (12 U.S.C. 347d), and foreign banks and foreign states (12 U.S.C. 358).

[11] The designated agent or operator of the private-sector arrangement would not need to be a depository institution. The designated agent would, however, need to be approved by the account-holding Reserve Bank, pursuant to these guidelines.

[12] For example, the Bank Service Company Act grants federal banking agencies the authority to regulate and examine third-party service providers and bank service companies that perform services for depository institutions under the federal banking agencies' supervision as if the company were an insured depository institution. 12 U.S.C. 1867(b). Evaluation under this guideline could therefore include considering whether the operator

agent and the operator of the private-sector arrangement should be subject to the examination authority of a federal or state supervisory agency and be in compliance with the requirements imposed by its supervisor regarding financial resources, liquidity, participant default management, and other aspects of risk management. As discussed in the proposed guideline below, the private-sector arrangement also would be expected to manage risks consistent with the standards outlined in Part I of the Board's Policy on Payment System Risk (PSR Policy), even if the private-sector arrangement is not otherwise subject to the PSR Policy.[13]

3. The Design and Rules of a Private-Sector Arrangement Must Be Consistent With the Federal Reserve's Policy Objectives To Promote a Safe, Efficient, and Accessible Payment System for U.S. Dollar Transactions and Be Consistent With the Intended Use of the Arrangement

The design and rules of the private-sector arrangement must be consistent with the Federal Reserve's policy objectives of fostering the long-term safety, efficiency, and accessibility of the U.S. dollar payment system. An evaluation under this guideline would assess whether the private-sector arrangement promotes payment system improvements and innovations and the extent to which the arrangement fosters competition in the payment system. Of relevance is whether the system is widely available for use by its intended end users and is designed to minimize the risk of disruption (rejection or delay of payments) to end users. Also of relevance is whether the system creates undue inefficiencies in the payment process or undue barriers to interoperability within the U.S. dollar payment system.

A private-sector arrangement that uses a joint account to facilitate settlement should also conform to the standards in the PSR Policy for risk management. Thus, even if the PSR Policy would not otherwise apply, before authorizing the establishment of a joint account, the private-sector arrangement would need to demonstrate that it has a general risk-management framework appropriate for the risks the system poses to the operator, agent, participants, the Reserve Bank granting the joint account, and other relevant parties and payment systems.

Finally, the design and rules of the private-sector arrangement, including rules relating to the funding of and disbursements from the joint account, should be consistent with the intended use of the account. For example, the rules should not provide an incentive for a participant that is not a joint account holder and not eligible for its own individual Federal Reserve account to use its participation in the arrangement, including the funding of its obligations under the arrangement through a joint account holder, to inappropriately take advantage of the credit-risk-free nature of the joint account for purposes other than settling payments through the arrangement.

4. Provision of a Joint Account Must Not Create Undue Credit, Settlement, or Other Risks to the Reserve Banks

Granting a request for a joint account must not create undue risks to a Reserve Bank. For instance, requests for joint accounts involving a financially unsound operator or agent would not be approved. Financially unsound depository institutions also may not be approved as accountholders for the joint account. In addition, the agent or operator and joint account holders must demonstrate an ongoing ability to meet all their obligations under the joint account agreement with a Reserve Bank, including during periods of stressed operating conditions or default by the agent, operator, one or more joint account holders, or other participants.

The manner in which the joint account will be used in support of the private-sector arrangement and any anticipated use of Reserve Bank services must also be identified as part of a joint account request. The private-sector arrangement must structure its use of the joint account and Reserve Bank services, including settlement processes, in a manner that seeks to avoid intraday overdrafts. No overnight or intraday credit would be permitted in a joint account. The agent also must demonstrate ways to monitor the joint account at all times necessary to avoid overdrafts and to promptly cover any inadvertent overdrafts. Further, the agent must demonstrate the ability to appropriately manage and control the transactions originated and received by the joint account.

5. Provision of a Joint Account Must Not Create Undue Risk to the Overall Payment System

The private-sector arrangement must not cause undue credit, settlement, or other risks to the efficient operation of other payment systems or the payment system as a whole. In evaluating a joint account request under this guideline, the operational and financial interaction with and use of other payment systems is relevant, as is the extent to which the use of the joint account may restrict a portion of funds from being available to support intraday liquidity needs of individual depository institutions for other payment and settlement activity.

6. Provision of a Joint Account Must Not Adversely Affect Monetary Policy Operations

The joint account must not adversely affect the conduct of monetary policy. The provision of a joint account could have important implications for monetary policy implementation, particularly if a joint account or joint accounts in aggregate have balances that fluctuate to the extent that they materially affect the supply of reserve balances available to depository institutions for meeting reserve requirements. Joint account balance volatility could be a particular concern if a future monetary policy framework relies on controlling the supply of reserves. Evaluation of the potential monetary policy implications of use of a joint account would include whether the balance in the joint account would be treated as reserves, the expected predictability and volatility of payment flows into and out of the joint account, and the potential for a Reserve Bank to impose limitations on account volatility without affecting the intended function of the arrangement.

Because of the potential effects on monetary policy implementation of the volatility of balances or payment flows in joint accounts, as a condition of opening the joint account, the Reserve Bank would retain the right to limit account volatility or require information on the level or the projected volatility of balances. An information requirement might include a notice period within which the agent must notify the Reserve Bank of shifts in account balances greater than a designated threshold. The Reserve Bank might also retain the right to impose a limit on the absolute size of the account at any time it determines appropriate. Finally, if other potential conditions discussed above are ineffective, the Reserve Bank might also

and agent of the private-sector arrangement would be subject to such supervision.

[13] The Board's PSR Policy sets forth standards regarding the management of risks that financial market infrastructures (FMIs) present to the financial system when an FMI expects to settle a daily aggregate gross value of $5 billion on a given day and when providing accounts and services to FMIs. Generally, FMIs are multilateral systems among participating financial institutions, including the system operator, used for the purposes of clearing, settling, or recording payments, securities, or other financial transactions. For the purposes of a system that uses a joint account to facilitate settlement, the standards would be applicable regardless of the daily aggregate gross value in a given day. The PSR policy is available at *https://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf.*

retain the right to restrict further or close joint accounts if warranted to implement appropriate monetary policy objectives.

III. Process for a Joint Account

The Board and the Reserve Banks will consider requests submitted to the Reserve Banks against the final guidelines when published.

As discussed above, the account agreement may place conditions on the private-sector arrangement, the agent, operator, or account holders regarding matters pertinent to the joint account, including, for example, limits on the level or volatility of account balances, requirements for information on projected balances or volatility of balances, or requirements related to compliance with risk management standards, including those within the PSR Policy.

IV. Request for Comment

The Board requests comment on all aspects of the proposed guidelines, including whether the scope and application of the proposed guidelines are sufficiently clear and appropriate to achieve their intended purpose and other criteria or information that commenters believe may be relevant to evaluate a joint account request under the proposed guidelines. The Board further seeks comment specifically on the following aspects of the proposed guidelines:

- What information, if any, about the establishment of an individual joint account should be made public?
- If the Reserve Banks reserved the right to set limits on balances in joint accounts, to require information on projected balances or volatility of balances, or to restrict further or close joint accounts (as discussed in guideline six), how, if at all, would the possibility of such limits affect interest in establishing a joint account, or use of such an account once opened? Are there other types of restrictions or conditions that, while equally effective in attaining the same objectives, might be less burdensome to a private-sector arrangement if placed on joint accounts once in use?
- Are there additional criteria or information that may be relevant to evaluate joint account requests for U.S. depository institutions to provide services to foreign clearing and settlement arrangements?

Finally, the Board also seeks comment on whether the Board or the Reserve Banks should consider other steps or actions to facilitate settlement for private-sector arrangements in light of market participants' efforts to develop faster retail payment solutions.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 19, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–30860 Filed 12–21–16; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 152 3105]

West-Herr Automotive Group, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 17, 2017.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/westherrconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''In the Matter of West-Herr Automotive Group, Inc., File No. 152 3105—Consent Agreement'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/westherrconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''In the Matter of West-Herr Automotive Group, Inc., File No. 152 3105—Consent Agreement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Evan Zullow, (202) 326–2914, Attorney, Financial Practices Division, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 16, 2016), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 17, 2017. Write ''In the Matter of West-Herr Automotive Group, Inc., File No. 152 3105—Consent Agreement'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/westherrconsent* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''In the Matter of West-Herr Automotive Group, Inc., File No. 152 3105—Consent Agreement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 17, 2017. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from West-Herr Automotive Group, Inc. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The respondent is a car dealership that sells used motor vehicles. According to the FTC complaint, discussed further below, respondent has represented that used motor vehicles it sells have been subject to rigorous inspection, including for safety issues, but has failed to disclose adequately that some of these vehicles are subject to open recalls for safety issues. Federal law currently does not prohibit car dealers from selling used vehicles subject to open safety recalls; Congress and some states are considering legislation that would do so. The Commission, however, can take action under the FTC Act to prohibit companies from making claims that mislead consumers about safety-related and other material issues. Further, the FTC can take such action in addition to (and entirely independent of) any private rights of action consumers themselves can bring under state law. This proposed action thus does not replace or alter any state laws or legislative proposals; rather, it offers additional protections beyond those afforded under other such laws, as they exist now or may be amended.

More specifically, the complaint in this matter alleges the respondent has posted advertisements on the Web site *www.westherr.com* regarding the advantages of buying from West-Herr that have made the following representations: ''Each vehicle goes through a rigorous multi-point inspection with our factory trained technicians. The service department grades each vehicle, and only the highest quality vehicles make it to our lots. . . . Only about 40% of the vehicles we take in on trade meet our standards. What happens to the other 60%? They get wholesaled (about 250 per week) at our auction, to other dealers in the area.''

Even though it makes such claims, the respondent has allegedly advertised on its Web sites numerous used vehicles that were subject to open recalls for safety issues. In numerous instances, when the respondent allegedly advertised used vehicles that are subject to open recalls for safety issues, it provided no accompanying clear and conspicuous disclosure of this fact. The proposed complaint alleges that this failure to disclose constitutes a deceptive act or practice under Section 5 of the FTC Act.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I prohibits the respondent from representing that used motor vehicles it offers for sale are safe, have been repaired for safety issues, or have been subject to an inspection for issues related to safety unless the used motor vehicles are not subject to any open recalls for safety issues or the respondent discloses, clearly and conspicuously, in close proximity to such representation, any material qualifying information related to open recalls for safety issues. Part II is a provision that orders the respondent to notify consumers who purchased from it a used motor vehicle between July 1, 2013 and June 30, 2015 that some of the used vehicles it sold during this time had been recalled for safety issues which weren't repaired as of the date they were sold. The notice also must specify how consumers can check whether the vehicle is subject to an unrepaired recall at the National Highway Traffic Safety Administration's Web site, *https://vinrcl.safercar.gov/vin/.* This Web site also provides information on how to get a vehicle fixed if it is subject to an open recall.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires the respondent to maintain for five years, and produce to the Commission upon demand, any relevant ads and associated documentary material. Part IV is an order distribution provision. Part V requires the respondent to notify the Commission of corporate changes that may affect compliance obligations. Part VI requires the respondent to submit a compliance report to the Commission 60 days after entry of the order, and also additional compliance reports within 10 business days of a written request by the Commission. Part VII ''sunsets'' the order after twenty years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Statement of the Federal Trade Commission Concerning Auto Recall Advertising Cases [1]

December 15, 2016

Unrepaired auto recalls pose a serious threat to public safety. Car manufacturers and the National Highway Traffic Safety Administration have recalled tens of millions of vehicles in each of the last several years for defects that pose significant safety risks to consumers. In 2015, for example, recalls affected 51 million vehicles nationwide.[2] And defects that have been the subject of recalls have led to severe injuries and even death for many consumers. Federal law requires that all new cars sold in the United States be free from recalls, but it does not prohibit auto dealers from selling used cars with open recalls. As a result, absent a change in law, neither NHTSA nor any other federal agency has the authority to ban the sale of used cars that have open recalls across the industry.

Section 5 of the Federal Trade Commission Act, however, enables the Commission to stop car sellers from engaging in false or misleading advertising practices that mask the existence of open recalls, and we are committed to doing just that. As part of this effort, the Commission is issuing final orders against General Motors Company, Jim Koons Management Company, and Lithia Motors, Inc. and announcing proposed orders against CarMax, Inc., West-Herr Automotive Group, Inc., and Asbury Automotive Group, Inc. In these enforcement actions, the Commission is challenging what we allege are deceptive advertising claims by these companies that highlight the rigorous inspections they perform on their used cars, but fail to clearly disclose the existence of unrepaired safety recalls.

More specifically, we allege that the companies named in these actions touted the rigorousness of their car inspections by claiming, for example, to engage in a ''172-point inspection and reconditioning,'' an ''exhaustive 160-checkpoint Quality Assurance Inspection,'' or a ''rigorous and extensive inspection.'' Some of these inspected cars were subject to open recalls. We charge that the companies' representations about their inspections, absent clear and conspicuous information about open recalls, were likely to mislead reasonable consumers into believing that the inspections included repairing open recalls. Therefore, the companies' failure to disclose this information was deceptive.[3]

Our orders stop this deceptive conduct and provide important additional protections for consumers. First, the orders prohibit each company from making any safety-related claim about its vehicles unless (1) the vehicles are recall-free, or, alternatively, the company discloses clearly and conspicuously and in close proximity to the representation both that the vehicles may be subject to open recalls and how consumers can determine the recall status of a particular car, and (2) the claims are not otherwise misleading.[4]

This means that, if any car on the companies' lots is subject to an open recall, every time the companies make these types of inspection claims, they must prominently disclose that their cars may be subject to open recalls and tell consumers how to determine the recall status of specific cars. And they must provide this information wherever the inspection claims are made—in the showroom, on the lot, and in any TV, radio, or Web site ad that consumers may view before they even visit a car dealer.

Further, the orders require each company to warn consumers who recently purchased one of its used cars that the vehicle may have an open recall. The Commission can seek civil penalties for violations of these orders, and we will not hesitate to do so if we discover a violation.[5]

These enforcement actions will help empower consumers to make more informed and safer purchasing decisions in a market that, absent a change in federal law, continues to include cars subject to open recalls. Dealers that repair all of their cars can continue to make truthful claims that they are recall-free, and can benefit from the competitive advantages of doing so. Dealers that cannot, or do not, repair all of their cars must instead prominently disclose that the cars may have open recalls when they make certain safety-related claims, such as claims about comprehensive inspections. Dealers are therefore incentivized to repair open recalls in the cars they advertise. At the same time, dealers can continue conducting their inspection programs and truthfully advertising them, provided they prominently disclose that cars may be subject to open recalls and do not misrepresent the recall status or safety of their cars.[6]

Finally, we note that other laws, including state product safety, tort, and other consumer protection laws, provide important safeguards to consumers affected by defective cars. Of course, the Commission's orders do not affect the protections afforded by those laws. Rather, the Commission's orders provide independent protection for consumers, requiring that they be given information about open recalls before they purchase a used car.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls altogether, and we support efforts seeking to address this serious public safety issue. Although the Commission's enforcement actions against individual companies cannot substitute for legislative solutions, they provide important protections for consumers to help ensure that they can make informed and safer purchasing decisions in the used car marketplace.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–30869 Filed 12–21–16; 8:45 am]

BILLING CODE 6750–01–P

[1] In the Matters of General Motors Company, File No. 1523101; Jim Koons Management Company, File No. 1523104; Lithia Motors, Inc., File No. 1523102; CarMax, Inc., File No. 1423202; West-Herr Automotive Group, Inc., File No. 1523105; and Asbury Automotive Group, Inc., File No 1523103.

[2] Gordon Trowbridge, National Highway Traffic Safety Administration, *U.S. Department of Transportation launches new public awareness campaign,* Jan. 21, 2016, *https://www.nhtsa.gov/About-NHTSA/Press-Releases/nhtsa_launches_safe_cars_save_lives_campaign_01212015.*

[3] Under Section 5 of the FTC Act, ''it can be deceptive to tell only half the truth, and to omit the rest. This may occur where a seller fails to disclose qualifying information necessary to prevent one of his affirmative statements from creating a misleading impression.'' *See In re International Harvester Co.,* 104 F.T.C. 949, 1057 (1984).

[4] For instance, a claim could still be misleading, even with the required disclosure, if a dealer represents that it inspected specific cars when it failed to do so, makes false oral statements to consumers that specific cars are free of recalls, or states a car *may* be subject to a recall (or otherwise implies it does not know the recall status) but in fact knows the car is actually subject to an open recall.

[5] *See U.S.* v. *New World Auto,* No. 16-cv-2401 (N.D. Tex. Aug. 22, 2016) (requiring auto dealers to pay civil penalties for violations of FTC order).

[6] Dealer inspection programs often involve checking that vital components of a car, like the brakes and drivetrain, are working properly and thus can provide important consumer benefits.

FEDERAL TRADE COMMISSION

[File No. 142 3202]

CarMax, Inc., Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or

deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 17, 2017.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/carmaxconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''In the Matter of CarMax, Inc., File No. 142 3202—Consent Agreement'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/carmaxconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''In the Matter of CarMax, Inc., File No. 142 3202—Consent Agreement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Evan Zullow, (202) 326–2914), Attorney, Financial Practices Division, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 16, 2016), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 17, 2017. Write ''In the Matter of CarMax, Inc., File No. 142 3202—Consent Agreement'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/carmaxconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''In the Matter of CarMax, Inc., File No. 142 3202—Consent Agreement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 17, 2017. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from CarMax, Inc. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The respondent is a car dealership that sells used motor vehicles. According to the FTC complaint, discussed further below, respondent has represented that used motor vehicles it sells have been subject to rigorous inspection, including for safety issues, but has failed to disclose adequately that some of these vehicles are subject to open recalls for safety issues. Federal law currently does not prohibit car dealers from selling used vehicles subject to open safety recalls; Congress and some states are considering

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

legislation that would do so. The Commission, however, can take action under the FTC Act to prohibit companies from making claims that mislead consumers about safety-related and other material issues. Further, the FTC can take such action in addition to (and entirely independent of) any private rights of action consumers themselves can bring under state law. This proposed action thus does not replace or alter any state laws or legislative proposals; rather, it offers additional protections beyond those afforded under other such laws, as they exist now or may be amended.

More specifically, the complaint in this matter alleges that the respondent has posted advertisements on its Web site that make the following representations:

125+ Point Inspection

Experienced technicians put every vehicle through a rigorous Certified Quality Inspection—over 125 points must check out before it meets our high standards.

No Cars With Flood or Frame Damage

Not every car that looks good is good. We're confident in the safety and reliability of our vehicles because our technicians are trained to detect those with hidden damage.

Every Used Car Is Renewed

CarMax cars undergo (on average) 12 hours of renewing—sandwiched between two meticulous inspections—for a car that doesn't look or feel used.

Even though it makes such claims, the respondent has allegedly advertised on its Web site numerous used vehicles that were subject to open recalls for safety issues. In numerous instances, when the respondent allegedly advertised used vehicles that are subject to open recalls for safety issues, it provided no accompanying clear and conspicuous disclosure of this fact. The proposed complaint alleges that this failure to disclose constitutes a deceptive act or practice under Section 5 of the FTC Act.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I prohibits the respondent from representing that used motor vehicles it offers for sale are safe, have been repaired for safety issues, or have been subject to a rigorous inspection unless the used motor vehicles are not subject to any open recalls for safety issues or the respondent discloses, clearly and conspicuously, in close proximity to such representation, any material qualifying information related to open recalls for safety issues. Part II is a provision that orders the respondent to notify consumers who purchased a used motor vehicle from a CarMax dealership between July 1, 2013 and November 20, 2014 that some of the used vehicles it sold during this time had been recalled for safety issues which weren't repaired as of the date they were sold. The notice also must specify how consumers can check whether the vehicle is subject to an unrepaired recall at the National Highway Traffic Safety Administration's Web site, *https://vinrcl.safercar.gov/vin/*. This Web site also provides information on how to get a vehicle fixed if it is subject to an open recall.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires the respondent to maintain for five years, and produce to the Commission upon demand, any relevant ads and associated documentary material. Part IV is an order distribution provision. Part V requires the respondent to notify the Commission of corporate changes that may affect compliance obligations. Part VI requires the respondent to submit a compliance report to the Commission 60 days after entry of the order, and also additional compliance reports within 10 business days of a written request by the Commission. Part VII ''sunsets'' the order after twenty years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

Statement of the Federal Trade Commission Concerning Auto Recall Advertising Cases [1]

December 15, 2016

Unrepaired auto recalls pose a serious threat to public safety. Car manufacturers and the National Highway Traffic Safety Administration have recalled tens of millions of vehicles in each of the last several years for defects that pose significant safety risks to consumers. In 2015, for example, recalls affected 51 million vehicles nationwide.[2] And defects that have been the subject of recalls have led to severe injuries and even death for many consumers. Federal law requires that all new cars sold in the United States be free from recalls, but it does not prohibit auto dealers from selling used cars with open recalls. As a result, absent a change in law, neither NHTSA nor any other federal agency has the authority to ban the sale of used cars that have open recalls across the industry.

Section 5 of the Federal Trade Commission Act, however, enables the Commission to stop car sellers from engaging in false or misleading advertising practices that mask the existence of open recalls, and we are committed to doing just that. As part of this effort, the Commission is issuing final orders against General Motors Company, Jim Koons Management Company, and Lithia Motors, Inc. and announcing proposed orders against CarMax, Inc., West-Herr Automotive Group, Inc., and Asbury Automotive Group, Inc. In these enforcement actions, the Commission is challenging what we allege are deceptive advertising claims by these companies that highlight the rigorous inspections they perform on their used cars, but fail to clearly disclose the existence of unrepaired safety recalls.

More specifically, we allege that the companies named in these actions touted the rigorousness of their car inspections by claiming, for example, to engage in a ''172-point inspection and reconditioning,'' an ''exhaustive 160-checkpoint Quality Assurance Inspection,'' or a ''rigorous and extensive inspection.'' Some of these inspected cars were subject to open recalls. We charge that the companies' representations about their inspections, absent clear and conspicuous information about open recalls, were likely to mislead reasonable consumers into believing that the inspections included repairing open recalls. Therefore, the companies' failure to disclose this information was deceptive.[3]

Our orders stop this deceptive conduct and provide important additional protections for consumers. First, the orders prohibit each company from making any safety-related claim about its vehicles unless (1) the vehicles are recall-free, or, alternatively, the company discloses clearly and conspicuously and in close proximity to the representation both that the vehicles may be subject to open recalls and how

[1] In the Matters of General Motors Company, File No. 1523101; Jim Koons Management Company, File No. 1523104; Lithia Motors, Inc., File No. 1523102; CarMax, Inc., File No. 1423202; West-Herr Automotive Group, Inc., File No. 1523105; and Asbury Automotive Group, Inc., File No 1523103.

[2] Gordon Trowbridge, National Highway Traffic Safety Administration, *U.S. Department of Transportation launches new public awareness campaign,* Jan. 21, 2016, *https://www.nhtsa.gov/About-NHTSA/Press-Releases/nhtsa_launches_safe_cars_save_lives_campaign_01212015.*

[3] Under Section 5 of the FTC Act, ''it can be deceptive to tell only half the truth, and to omit the rest. This may occur where a seller fails to disclose qualifying information necessary to prevent one of his affirmative statements from creating a misleading impression.'' *See In re International Harvester Co.,* 104 F.T.C. 949, 1057 (1984).

consumers can determine the recall status of a particular car, and (2) the claims are not otherwise misleading.[4]

This means that, if any car on the companies' lots is subject to an open recall, every time the companies make these types of inspection claims, they must prominently disclose that their cars may be subject to open recalls and tell consumers how to determine the recall status of specific cars. And they must provide this information wherever the inspection claims are made—in the showroom, on the lot, and in any TV, radio, or Web site ad that consumers may view before they even visit a car dealer.

Further, the orders require each company to warn consumers who recently purchased one of its used cars that the vehicle may have an open recall. The Commission can seek civil penalties for violations of these orders, and we will not hesitate to do so if we discover a violation.[5]

These enforcement actions will help empower consumers to make more informed and safer purchasing decisions in a market that, absent a change in federal law, continues to include cars subject to open recalls. Dealers that repair all of their cars can continue to make truthful claims that they are recall-free, and can benefit from the competitive advantages of doing so. Dealers that cannot, or do not, repair all of their cars must instead prominently disclose that the cars may have open recalls when they make certain safety-related claims, such as claims about comprehensive inspections. Dealers are therefore incentivized to repair open recalls in the cars they advertise. At the same time, dealers can continue conducting their inspection programs and truthfully advertising them, provided they prominently disclose that cars may be subject to open recalls and do not misrepresent the recall status or safety of their cars.[6]

Finally, we note that other laws, including state product safety, tort, and other consumer protection laws, provide important safeguards to consumers affected by defective cars. Of course, the Commission's orders do not affect the protections afforded by those laws. Rather, the Commission's orders provide independent protection for consumers, requiring that they be given information about open recalls before they purchase a used car.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls altogether, and we support efforts seeking to address this serious public safety issue. Although the Commission's enforcement actions against individual companies cannot substitute for legislative solutions, they provide important protections for consumers to help ensure that they can make informed and safer purchasing decisions in the used car marketplace.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–30868 Filed 12–21–16; 8:45 am]

BILLING CODE 6750–01–P

[4] For instance, a claim could still be misleading, even with the required disclosure, if a dealer represents that it inspected specific cars when it failed to do so, makes false oral statements to consumers that specific cars are free of recalls, or states a car *may* be subject to a recall (or otherwise implies it does not know the recall status) but in fact knows the car is actually subject to an open recall.

[5] *See U.S.* v. *New World Auto,* No. 16–cv–2401 (N.D. Tex. Aug. 22, 2016) (requiring auto dealers to pay civil penalties for violations of FTC order).

[6] Dealer inspection programs often involve checking that vital components of a car, like the brakes and drivetrain, are working properly and thus can provide important consumer benefits.

FEDERAL TRADE COMMISSION

[File No. 152 3103]

Asbury Automotive Group, Inc., Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 17, 2017.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/asburyconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''In the Matter of Asbury Automotive Group, Inc., File No. 152 3103—Consent Agreement'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/asburyconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''In the Matter of Asbury Automotive Group, Inc., File No. 152 3103—Consent Agreement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Evan Zullow, (202) 326–2914, Attorney, Financial Practices Division, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 16, 2016), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 17, 2017. Write ''In the Matter of Asbury Automotive Group, Inc., File No. 152 3103—Consent Agreement'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or

other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/asburyconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''In the Matter of Asbury Automotive Group, Inc., File No. 152 3103—Consent Agreement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 17, 2017. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Asbury Automotive Group, Inc. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The respondent is a car dealership that sells used motor vehicles. According to the FTC complaint, discussed further below, respondent has represented that the certified used motor vehicles it sells have been subject to rigorous inspection, including for safety issues, but has failed to disclose adequately that some of these vehicles are subject to open recalls for safety issues. Federal law currently does not prohibit car dealers from selling used vehicles subject to open safety recalls; Congress and some states are considering legislation that would do so. The Commission, however, can take action under the FTC Act to prohibit companies from making claims that mislead consumers about safety-related and other material issues. Further, the FTC can take such action in addition to (and entirely independent of) any private rights of action consumers themselves can bring under state law. This proposed action thus does not replace or alter any state laws or legislative proposals; rather, it offers additional protections beyond those afforded under other such laws, as they exist now or may be amended.

More specifically, the complaint in this matter alleges that the respondent has posted advertisements on one of its Web sites that included the following representations:

Our Crown Certified Used Vehicles Include: 150 Point Bumper-to-bumper inspection . . .

* * *

Inspected, Reconditioned & Certified

Every Crown Certified used car or truck has undergone a 150 point bumper-to-bumper inspection by Certified mechanics. We find and fix problems from bulbs to brakes before offering a vehicle for sale.

Even though it makes such claims, the respondent has allegedly advertised on its Web sites numerous certified used vehicles that were subject to open recalls for safety issues. In numerous instances, when the respondent allegedly advertised certified used vehicles that are subject to open recalls for safety issues, it provided no accompanying clear and conspicuous disclosure of this fact. The proposed complaint alleges that this failure to disclose constitutes a deceptive act or practice under Section 5 of the FTC Act.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I prohibits the respondent from representing that used motor vehicles it offers for sale are safe, have been repaired for safety issues, or have been subject to an inspection for issues related to safety unless the used motor vehicles are not subject to any open recalls for safety issues or the respondent discloses, clearly and conspicuously, in close proximity to such representation, any material qualifying information related to open recalls for safety issues. Part II is a provision that orders the respondent to notify consumers who purchased from it a certified used motor vehicle between July 1, 2013 and September 2, 2015 that some of the used vehicles it sold during this time had been recalled for safety issues which weren't repaired as of the date they were sold. The notice also must specify how consumers can check whether the vehicle is subject to an unrepaired recall at the National Highway Traffic Safety Administration's Web site, *https://vinrcl.safercar.gov/vin/.* This Web site also provides information on how to get a vehicle fixed if it is subject to an open recall.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires the respondent to maintain for five years, and produce to the Commission upon demand, any relevant ads and associated documentary material. Part IV is an order distribution provision. Part V requires the respondent to notify the Commission of corporate changes that may affect compliance obligations. Part VI requires the respondent to submit a compliance report to the Commission 60 days after entry of the order, and also additional compliance reports within 10 business days of a written request by the Commission. Part

VII ''sunsets'' the order after twenty years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

Statement of the Federal Trade Commission Concerning Auto Recall Advertising Cases [1]

December 15, 2016

Unrepaired auto recalls pose a serious threat to public safety. Car manufacturers and the National Highway Traffic Safety Administration have recalled tens of millions of vehicles in each of the last several years for defects that pose significant safety risks to consumers. In 2015, for example, recalls affected 51 million vehicles nationwide.[2] And defects that have been the subject of recalls have led to severe injuries and even death for many consumers. Federal law requires that all new cars sold in the United States be free from recalls, but it does not prohibit auto dealers from selling used cars with open recalls. As a result, absent a change in law, neither NHTSA nor any other federal agency has the authority to ban the sale of used cars that have open recalls across the industry.

Section 5 of the Federal Trade Commission Act, however, enables the Commission to stop car sellers from engaging in false or misleading advertising practices that mask the existence of open recalls, and we are committed to doing just that. As part of this effort, the Commission is issuing final orders against General Motors Company, Jim Koons Management Company, and Lithia Motors, Inc. and announcing proposed orders against CarMax, Inc., West-Herr Automotive Group, Inc., and Asbury Automotive Group, Inc. In these enforcement actions, the Commission is challenging what we allege are deceptive advertising claims by these companies that highlight the rigorous inspections they perform on their used cars, but fail to clearly disclose the existence of unrepaired safety recalls.

More specifically, we allege that the companies named in these actions touted the rigorousness of their car inspections by claiming, for example, to engage in a ''172-point inspection and reconditioning,'' an ''exhaustive 160-checkpoint Quality Assurance Inspection,'' or a ''rigorous and extensive inspection.'' Some of these inspected cars were subject to open recalls. We charge that the companies' representations about their inspections, absent clear and conspicuous information about open recalls, were likely to mislead reasonable consumers into believing that the inspections included repairing open recalls. Therefore, the companies' failure to disclose this information was deceptive.[3]

Our orders stop this deceptive conduct and provide important additional protections for consumers. First, the orders prohibit each company from making any safety-related claim about its vehicles unless (1) the vehicles are recall-free, or, alternatively, the company discloses clearly and conspicuously and in close proximity to the representation both that the vehicles may be subject to open recalls and how consumers can determine the recall status of a particular car, and (2) the claims are not otherwise misleading.[4]

This means that, if any car on the companies' lots is subject to an open recall, every time the companies make these types of inspection claims, they must prominently disclose that their cars may be subject to open recalls and tell consumers how to determine the recall status of specific cars. And they must provide this information wherever the inspection claims are made—in the showroom, on the lot, and in any TV, radio, or Web site ad that consumers may view before they even visit a car dealer.

Further, the orders require each company to warn consumers who recently purchased one of its used cars that the vehicle may have an open recall. The Commission can seek civil penalties for violations of these orders, and we will not hesitate to do so if we discover a violation.[5]

These enforcement actions will help empower consumers to make more informed and safer purchasing decisions in a market that, absent a change in federal law, continues to include cars subject to open recalls. Dealers that repair all of their cars can continue to make truthful claims that they are recall-free, and can benefit from the competitive advantages of doing so. Dealers that cannot, or do not, repair all of their cars must instead prominently disclose that the cars may have open recalls when they make certain safety-related claims, such as claims about comprehensive inspections. Dealers are therefore incentivized to repair open recalls in the cars they advertise. At the same time, dealers can continue conducting their inspection programs and truthfully advertising them, provided they prominently disclose that cars may be subject to open recalls and do not misrepresent the recall status or safety of their cars.[6]

Finally, we note that other laws, including state product safety, tort, and other consumer protection laws, provide important safeguards to consumers affected by defective cars. Of course, the Commission's orders do not affect the protections afforded by those laws. Rather, the Commission's orders provide independent protection for consumers, requiring that they be given information about open recalls before they purchase a used car.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls altogether, and we support efforts seeking to address this serious public safety issue. Although the Commission's enforcement actions against individual companies cannot substitute for legislative solutions, they provide important protections for consumers to help ensure that they can make informed and safer purchasing decisions in the used car marketplace.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–30870 Filed 12–21–16; 8:45 am]

BILLING CODE 6750–01–P

[1] In the Matters of General Motors Company, File No. 1523101; Jim Koons Management Company, File No. 1523104; Lithia Motors, Inc., File No. 1523102; CarMax, Inc., File No. 1423202; West-Herr Automotive Group, Inc., File No. 1523105; and Asbury Automotive Group, Inc., File No 1523103.

[2] Gordon Trowbridge, National Highway Traffic Safety Administration, *U.S. Department of Transportation launches new public awareness campaign,* Jan. 21, 2016, *https://www.nhtsa.gov/About-NHTSA/Press-Releases/nhtsa_launches_safe_cars_save_lives_campaign_01212015.*

[3] Under Section 5 of the FTC Act, ''it can be deceptive to tell only half the truth, and to omit the rest. This may occur where a seller fails to disclose qualifying information necessary to prevent one of his affirmative statements from creating a misleading impression.'' *See In re International Harvester Co.,* 104 F.T.C. 949, 1057 (1984).

[4] For instance, a claim could still be misleading, even with the required disclosure, if a dealer represents that it inspected specific cars when it failed to do so, makes false oral statements to consumers that specific cars are free of recalls, or states a car *may* be subject to a recall (or otherwise implies it does not know the recall status) but in fact knows the car is actually subject to an open recall.

[5] *See U.S.* v. *New World Auto,* No. 16–cv–2401 (N.D. Tex. Aug. 22, 2016) (requiring auto dealers to pay civil penalties for violations of FTC order).

[6] Dealer inspection programs often involve checking that vital components of a car, like the brakes and drivetrain, are working properly and thus can provide important consumer benefits.

FINANCIAL STABILITY OVERSIGHT COUNCIL

Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Financial Stability Oversight Council (the ''Council'') invites members of the public and affected agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The Council is soliciting comments concerning its collection of information related to its authority to designate financial market utilities as systemically important. Section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection (the ''Dodd-Frank Act'') provides the Council the authority to designate a financial market utility (''FMU'') that the Council determines is or is likely to become systemically important because the failure of or a disruption to the functioning of the FMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the United States financial system.

DATES: Written comments on the rule must be received on or before February 21, 2017.

FOR FURTHER INFORMATION CONTACT: Eric A. Froman, Executive Director, Financial Stability Oversight Council, U.S. Treasury Department, (202) 622–1942; Stephen Milligan, Attorney-Advisor, U.S. Treasury Department, (202) 622–4051.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed collection according to the instructions below. All submissions must refer to the document title.

Electronic submission of comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Mail. Send comments to Financial Stability Oversight Council, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Public inspection of comments. All properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov.*

Additional instructions. In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

SUPPLEMENTARY INFORMATION:

Title: Designation of Financial Market Utilities.

OMB Control Number: 1505–0239.

Abstract: On July 27, 2011, the Council published in the **Federal Register** a final rule (12 CFR part 1320) that describes the criteria that will inform and the processes and procedures established under the Dodd-Frank Act for the Council's designation of FMUs as systemically important under the Dodd-Frank Act. On July 18, 2012, the Council designated eight FMUs as systemically important under Title VIII of the Dodd-Frank Act. The collection of information under 12 CFR 1320.11 affords FMUs that are under consideration for designation, or rescission of designation, an opportunity to submit written materials to the Council in support of, or in opposition to, designation or rescission of designation. The collection of information under 12 CFR 1320.12 affords FMUs an opportunity to contest a proposed determination of the Council by requesting a hearing and submitting written materials (or, at the sole discretion of the Council, oral testimony and oral argument). The collection of information in 12 CFR 1320.14 affords FMUs an opportunity to contest the Council's waiver or modification of the notice, hearing, or other requirements contained in 12 CFR 1320.11 and 1320.12 by requesting a hearing and submitting written materials (or, at the sole discretion of the Council, oral testimony and oral argument). The information collected from FMUs under 12 CFR 1320.20 will be used by the Council to determine whether to designate an additional FMU or to rescind the designation of a designated FMU.

The collection of information under 12 CFR 1320.11 affords FMUs that are under consideration for designation, or rescission of designation, an opportunity to submit written materials to the Council in support of, or in opposition to, designation or rescission of designation. The collection of information under 12 CFR 1320.12 affords FMUs an opportunity to contest a proposed determination of the Council by requesting a hearing and submitting written materials (or, at the sole discretion of the Council, oral testimony and oral argument). The collection of information in 12 CFR 1320.14 affords FMUs an opportunity to contest the Council's waiver or modification of the notice, hearing, or other requirements contained in 12 CFR 1320.11 and 1320.12 by requesting a hearing and submitting written materials (or, at the sole discretion of the Council, oral testimony and oral argument). The information collected from FMUs under 12 CFR 1320.20 will be used by the Council to determine whether to designate an additional FMU or to rescind the designation of a designated FMU.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for-profit organization.

Estimated Total Annual Burden Hours for all Collections: 500 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: Public Law 104–13 (44 U.S.C. 3506(c)(2)(A))

Dated: December 14, 2016.

Eric A. Froman,

Executive Director, Financial Stability Oversight Council.

[FR Doc. 2016–30846 Filed 12–21–16; 8:45 am]

BILLING CODE 4810–25–P–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*Consumer Assessment of Healthcare Providers and Systems (CAHPS) Health Plan Survey Comparative Database.*''

DATES: Comments on this notice must be received by February 21, 2017.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

Proposed Project

Consumer Assessment of Healthcare Providers and Systems (CAHPS) Health Plan Survey Comparative Database

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) reapprove, under the Paperwork Reduction Act of 1995, AHRQ's collection of information for the AHRQ Consumer Assessment of Healthcare Providers and Systems (CAHPS) Database for Health Plans: OMB Control number 0935–0165, expiration May 31, 2017. The CAHPS Health Plan Database consists of data from the AHRQ CAHPS Health Plan Survey. Health plans in the U.S. are asked to voluntarily submit data from the survey to AHRQ, through its contractor, Westat. The CAHPS Database was developed by AHRQ in 1998 in response to requests from health plans, purchasers, the Centers for Medicare and Medicaid Services (CMS) to provide comparative data to support public reporting of health plan ratings, health plan accreditation and quality improvement.

This research has the following goals:

(1) To maintain the CAHPS Health Plan database using data from AHRQ's standardized CAHPS Health Plan survey to provide comparative results to health care purchasers, consumers, regulators and policy makers across the country.

(2) To offer several products and services, including comparative benchmark results presented through an Online Reporting System, summary chartbooks, custom analyses, and data for research purposes.

(3) To provide data for AHRQ's annual National Healthcare Quality and Disparities Report.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services; quality measurement and development, and database development. 42 U.S.C. 299a(a)(1), (2) and 8.

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(1) Health Plan Registration Form—The point of contact (POC), often the sponsor from Medicaid agencies and health plans, completes a number of data submission steps and forms, beginning with the completion of the online registration form. The purpose of this form is to collect basic contact information about the organization and initiate the registration process.

(2) Data Use Agreement (DUA)—The purpose of the data use agreement, completed by the participating sponsor organization, is to state how data submitted by health plans will be used and provides confidentiality assurances.

(3) Health Plan Information Form—The purpose of this form, completed by the participating organization, is to collect background characteristics of the health plan.

(4) Data Files Submission—POCs upload their data file using the Health Plan data file specifications, which are designed to ensure that users submit standardized and consistent data in the way variables are named, coded, and formatted.

Survey data from the CAHPS Health Plan Database is used to produce four types of products: (1) an annual chartbook available to the public on the CAHPS Database Web site (*https://www.cahpsdatabase.ahrq.gov/CAHPSIDB/Public/Chartbook.aspx*); (2) individual participant comparative reports that are confidential and customized for each participating organization (*e.g.,* health plan, Medicaid agency) that submits their data; (3) a research database available to researchers wanting to conduct additional analyses; and (4) data tables provided to AHRQ for inclusion in the National Healthcare Quality and Disparities Report.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated burden hours for the respondent to participate in the database. The burden hours pertain only to the collection of Medicaid data from State Medicaid agencies and individual Medicaid health plans because those are the only entities that submit data through the data submission process (other data are obtained from CMS). The 85 POCs in Exhibit 1 are a combination of an estimated 75 State Medicaid agencies and individual health plans, and 10 vendor organizations.

Each State Medicaid agency, health plan or vendor will register online for submission. The online Registration form will require about 5 minutes to complete. Each submitter will also complete a Health Plan information form of information about each Health Plan such as the name of the plan, the product type (*e.g.,* HMO, PPO), the population surveyed (*e.g.,* adult Medicaid or child Medicaid). Each year, the prior year's plan data are preloaded in the plan table to lessen burden on the Sponsor. The Sponsor is responsible for updating the plan table to reflect the current year's plan information. The online Health Plan Information form takes on average 30 minutes to complete per health plan with each POC completing the form for 4 plans on average.

The data use agreement will be completed by the 75 participating State Medicaid agencies or individual health plans. Vendors do not sign or submit DUAs. The DUA requires about 3 minutes to sign and return by fax or mail. Submitters will provide a copy of their questionnaires and the survey data file in the required file format. Survey data files must conform to the data file layout specifications provide by the CAHPS Database.

Since the unit of analysis is at the health plan level, submitters will upload one data file per health plan. Once a data file is uploaded the file will be automatically checked to ensure it

conforms to the specifications and a data file status report will be produced and made available to the submitter. Submitters will review each report and will be expected to fix any errors in their data file and resubmit if necessary. It will take about one hour to submit the data for each plan, and each POC will submit data for 4 plans on average. The total burden is estimated to be 501 hours annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/ POCs	Number of responses per POC	Hours per response	Total burden hours
Registration Form	85	1	5/60	7
Health Plan Information Form	75	4	30/60	150
Data Use Agreement	75	1	3/60	4
Data Files Submission	85	4	1	340
Total	320	NA	NA	501

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to complete one submission process. The cost burden is estimated to be $22,153 annually.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Registration Form	85	7	[a] 50.99	$357
Health Plan Information Form	75	150	[a] 50.99	7,649
Data Use Agreement	75	4	[b] 89.35	357
Data Files Submission	85	340	[c] 40.56	13,790
Total	320	501	NA	22,153

* National Compensation Survey: Occupational wages in the United States May 2015, "U.S. Department of Labor, Bureau of Labor Statistics."
a) Based on the mean hourly wage for Medical and Health Services Managers (11–9111).
b) Based on the mean hourly wage for Chief Executives (11–1011).
c) Based on the mean hourly wages for Computer Programmer (15–1131).

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2016–30773 Filed 12–21–16; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–16AXB]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) 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; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) 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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice

should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Feasibility of Social Distancing Measures in K–12 Schools in the United States—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Division of Global Migration and Quarantine (DGMQ), requests approval of a new information collection to identify potential social distancing strategies to reduce person-to-person contact among students and staff in K–12 schools that are implementable without causing major detrimental effects to ongoing education activities. CDC is requesting a one-year approval to collect information.

The information collection for which approval is sought is in accordance with DGMQ/CDC's mission to reduce morbidity and mortality in mobile populations, and to prevent the introduction, transmission, or spread of communicable diseases within the United States. Insights gained from this information collection will assist in the planning and implementation of CDC Pre-Pandemic Community Mitigation Guidance on the use of school-based measures to slow transmission during an influenza pandemic.

School-aged children are often the main introducers and an important transmission source of influenza and other respiratory viruses in their families, and school-based outbreaks frequently pre-date wide-spread influenza transmission in the surrounding communities. Therefore, infection control measures undertaken to reduce virus transmission among children at schools may also help prevent or postpone influenza outbreaks in communities. In respiratory transmission of influenza, proximity to the person with influenza plays a significant role. Strategies that increase physical distance between students and/or reduce the duration of person to person contact in school settings may, theoretically, be effective in slowing influenza transmission. There have been no evaluations to date of feasibility of implementing social distancing measures other than school closures. Therefore, there is a need to research alternative social distancing strategies that can help reduce influenza transmission in schools while minimizing social and economic burdens on the community.

CDC staff proposes that the information collection for this package will target senior education officials, senior health officials, and representatives from the National Association of School Nurses, school safety organizations/law enforcement, and National Distance Learning Association. CDC will collect qualitative data using focus group discussions on: (a) Current knowledge, attitudes, and potential practices with regard to organizing and delivering K–12 instruction in ways that help increase physical distance among students and/or reduce duration of in-person instruction at schools (including use of distance learning options), while preserving the normal education process; and (b) facilitating and inhibiting factors for implementing and sustaining the potential social distancing options in emergencies as an alternative to the complete student dismissal in K–12 schools.

Findings obtained from this information collection will be used to inform the update of CDC's Pre-pandemic Community Mitigation Guidance on the implementation of school related measures to prevent the spread of influenza. This Guidance is used as an important planning and reference tool for both State and local health departments in the United States.

There are no costs to the respondents other than their time. The maximum total estimated annual burden hours are 640.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)
Senior educators; senior health officials; representatives from the National Association of School Nurses, school safety organizations/law enforcement, and National Distance Learning Association.	Focus Group Interview Guide (semi-structured questionnaire).	320	1	2

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. 2016–30777 Filed 12–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–17–17IM; Docket No. CDC–2016–0120]

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 Use of the Cyclosporiasis National Hypothesis Generating Questionnaire (CNHGQ) during Investigations of Foodborne Disease Clusters and Outbreaks. CDC seeks to request Office of Management and Budget (OMB) approval to collect information via the CNHGQ from persons who have developed

symptomatic cases of Cyclospora infection during periods in which increased numbers of such cases are reported (typically, during spring and summer months).

DATES: Written comments must be received on or before February 21, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0120 by any of the following methods:

- Federal eRulemaking Portal: *Regulations.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

Use of the Cyclosporiasis National Hypothesis Generating Questionnaire (CNHGQ) during Investigations of Foodborne Disease Clusters and Outbreaks—New—Center for Global Health (CGH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

An estimated 1 in 6 Americans per year become ill with a foodborne disease. Foodborne outbreaks of cyclosporiasis—caused by the parasite *Cyclospora cayetanensis*—have been reported in the United States since the mid-1990s and have been linked to various types of fresh produce. During the 15-year period of 2000–2014, 31 U.S. foodborne outbreaks of cyclosporiasis were reported; the total case count was 1,562. It is likely that more cases (and outbreaks) occurred than were reported; in addition, because of insufficient data, many of the reported cases could not be directly linked to an outbreak or to a particular food vehicle.

Collecting the requisite data for the initial hypothesis-generating phase of investigations of multistate foodborne disease outbreaks is associated with multiple challenges, including the need to have high-quality hypothesis-generating questionnaire(s) that can be used effectively in multijurisdictional investigations. Such a questionnaire was developed in the past for use in the context of foodborne outbreaks caused by bacterial pathogens; that questionnaire is referred to as the Standardized National Hypothesis Generating Questionnaire (SNHGQ). However, not all of the data elements in the SNHGQ are relevant to the parasite *Cyclospora* (*e.g.,* questions about consumption of meat and dairy products); on the other hand, additional data elements (besides those in the SNHGQ) are needed to capture information pertinent to *Cyclospora* and to fresh produce vehicles of infection. Therefore, the Cyclosporiasis National Hypothesis Generating Questionnaire (CNHGQ) has been developed, by using core data elements from the SNHGQ and incorporating modifications pertinent to *Cyclospora.*

The core data elements from the SNHGQ were developed by a series of working groups comprised of local, state, and federal public health partners. Subject matter experts at CDC have developed the CNHGQ, by modifying the SNHGQ to include and focus on data elements pertinent to *Cyclospora*/cyclosporiasis. Input also was solicited from state public health partners. Because relatively few data elements in the SNHGQ needed to be modified, a full vetting process was determined not to be necessary. The CNHGQ has been designed for administration over the telephone by public health officials, to collect data elements from case-patients or their proxies. The data that are collected will be pooled and analyzed at CDC, to generate hypotheses about potential vehicles/sources of infection.

CDC requests OMB approval to collect information via the CNHGQ from persons who have developed symptomatic cases of *Cyclospora* infection during periods in which increased numbers of such cases are reported (typically, during spring and summer months). In part because molecular typing methods are not yet available for *C. cayetanensis,* it is important to interview all case-patients identified during periods of increased reporting, to help determine if their cases could be part of an outbreak(s).

The CNHGQ is not expected to entail substantial burden for respondents. The estimated total annualized burden associated with administering the CNHGQ is 750 hours (approximately 1,000 individuals interviewed x 45 minutes/response). There will be 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	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Individuals	Cyclosporiasis National Hypothesis Generating Questionnaire.	1,000	1	45/60	750
Total					750

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. 2016–30778 Filed 12–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–17–0728; Docket No. CDC–2016–0119]

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 National Notifiable Diseases Surveillance System (NNDSS). The NNDSS is the nation's public health surveillance system that monitors the occurrence and spread of diseases and conditions that are nationally notifiable or under national surveillance.

DATES: Written comments must be received on or before February 21, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0119 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.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

National Notifiable Diseases Surveillance System (OMB Control Number 0920–0728, expires 1/31/2019)—Revision—Center for Surveillance, Epidemiology and Laboratory Services, CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Public Health Services Act (42 U.S.C. 241) authorizes CDC to disseminate nationally notifiable condition information. The Nationally Notifiable Diseases Surveillance System (NNDSS) is based on data collected at the state, territorial and local levels as a result of legislation and regulations in those jurisdictions that require health care providers, medical laboratories, and other entities to submit health-related data on reportable conditions to public health departments. These reportable conditions, which include infectious and non-infectious diseases, vary by jurisdiction depending upon each jurisdiction's health priorities and needs. Infectious disease agents and environmental hazards often cross geographical boundaries. Each year, the

Council of State and Territorial Disease Epidemiologists (CSTE), supported by CDC, determines which reportable conditions should be designated nationally notifiable and voluntarily submitted to CDC so that information can be shared across jurisdictional boundaries and both surveillance and prevention and control activities can be coordinated at regional and national levels.

CDC requests a three-year approval for a Revision for the National Notifiable Diseases Surveillance System (NNDSS), OMB Control No. 0920–0728, Expiration Date 01/31/2019. This Revision includes requests for approval to receive: (1) Case notification data from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau (independent nations that operate under a Compact of Free Association with the United States of America that are commonly referred to as ''freely associated states''); (2) case notification data for histoplasmosis which is now under standardized surveillance; and (3) case notification data for all enteric *Escherichia coli* infections should any of them become nationally notifiable or be placed under standardized surveillance. CDC already has approval to receive case notification data for Shiga toxin-producing *Escherichia coli* (STEC) which is nationally notifiable.

Although this Revision includes case notifications that were not part of the last NNDSS Revision, the estimate of the average burden per response based on the burden tables from all of the consolidated applications for states, cities, and territories has not changed. The addition of new diseases and conditions, should they become nationally notifiable or be placed under standardized surveillance, will not increase the burden since most case notifications are submitted from already existing databases. The burden on the states and cities is estimated to be 10 hours per response and the burden on the territories is estimated to be 5 hours per response. The total burden will increase because of the request to receive case notification data from the freely associated states. The burden on the freely associated states is estimated to be the same as the burden for the territories, 5 hours per response. This is because the methods and systems that the freely associated states use to send case notification data to CDC are nearly the same as the territories.

There will be no costs to respondents other than their time. The estimated annual burden is 29,120 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
States	Weekly and Annual	50	52	10	26,000
Territories	Weekly and Annual	5	52	5	1,300
Freely Associated States	Weekly and Annual	3	52	5	780
Cities	Weekly and Annual	2	52	10	1,040
Total					29,120

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. 2016–30779 Filed 12–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–2275]

Lead in Cosmetic Lip Products and Externally Applied Cosmetics: Recommended Maximum Level; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled, ''Lead in Cosmetic Lip Products and Externally Applied Cosmetics: Recommended Maximum Level.'' This draft guidance provides a recommended maximum level of 10 parts per million (ppm) for lead as an impurity in cosmetic lip products (such as lipsticks, lip glosses, and lip liners) and externally applied cosmetics (such as eye shadows, blushes, shampoos, and body lotions) marketed in the United States. We consider the recommended maximum lead level to be achievable with the use of good manufacturing practices and consistent with the 10 ppm maximum lead level for similar products recommended by other countries, and we have concluded that the recommended maximum lead level would not pose a health risk.

DATES: Although you can comment on any guidance at any time (see 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 electronic or written comments on the draft guidance by February 21, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://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–2014–D–2275 for ''Lead in Cosmetic Lip Products and Externally Applied Cosmetics: Recommended Maximum Level; Draft Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://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.'' We will review this copy, including the claimed confidential information, in our 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 *https://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 *https://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.

Submit written requests for single copies of the draft guidance to the Office of Cosmetics and Colors, Center for Food Safety and Applied Nutrition, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Julie N. Barrows, Center for Food Safety and Applied Nutrition (HFS–106), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1119.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled, ''Lead in Cosmetic Lip Products and Externally Applied Cosmetics: Recommended Maximum Level.'' This draft guidance provides a recommended maximum level of 10 ppm for lead as an impurity in cosmetic lip products (such as lipsticks, lip glosses, and lip liners) and externally applied cosmetics (such as eye shadows, blushes, shampoos, and body lotions) marketed in the United States. FDA has concluded that a recommended maximum level of 10 ppm for lead as an impurity in cosmetic lip products and externally applied cosmetics would not pose a health risk. We consider the recommended maximum lead level to be achievable with the use of good manufacturing practices. Additionally, the recommended maximum level is consistent with the 10 ppm maximum lead level for similar products recommended by other countries. This draft guidance does not apply to topically applied products that are classified as drugs or to hair dyes that contain lead acetate as an ingredient.

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 FDA's current thinking on ''Lead in Cosmetic Lip Products and Externally Applied Cosmetics: Recommended Maximum Level.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Cosmetics/GuidanceRegulation/default.htm* or *https://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: December 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–30781 Filed 12–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2474]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Reporting Associated With Designated New Animal Drugs for Minor Use and Minor Species

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 23, 2017.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0605. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed

collection of information to OMB for review and clearance.

Reporting Associated With Designated New Animal Drugs for Minor Use and Minor Species; 21 CFR Part 516 OMB Control Number 0910–0605—Extension

The Minor Use and Minor Species (MUMS) Animal Health Act of 2004 (Pub. L. 108–282) amended the Federal Food, Drug, and Cosmetic Act to authorize FDA to establish new regulatory procedures intended to make more medications legally available to veterinarians and animal owners for the treatment of minor animal species as well as uncommon diseases in major animal species. This legislation provides incentives designed to help pharmaceutical companies overcome the financial burdens they face in providing limited-demand animal drugs. These incentives are only available to sponsors whose drugs are ''MUMS-designated'' by FDA. Minor use drugs are drugs for use in major species (cattle, horses, swine, chickens, turkeys, dogs, and cats) that are needed for diseases that occur in only a small number of animals either because they occur infrequently or in limited geographic areas. Minor species are all animals other than the major species; for example, zoo animals, ornamental fish, parrots, ferrets, and guinea pigs. Some animals of agricultural importance are also minor species. These include animals such as sheep, goats, catfish, and honeybees. Participation in the MUMS program is completely optional for drug sponsors so the associated reporting only applies to those sponsors who request and are subsequently granted ''MUMS designation.''

Our regulations in 21 CFR part 516 specify the criteria and procedures for requesting MUMS designation as well as the annual reporting requirements for MUMS designees. Section 516.20 (21 CFR 516.20) provides requirements on the content and format of a request for MUMS-drug designation; § 516.26 provides requirements for amending MUMS-drug designation; § 516.27 provides for change in sponsorship of MUMS-drug designation; § 516.29 provides for termination of MUMS-drug designation; § 516.30 contains the requirements for annual reports from sponsor(s) of MUMS-designated drugs; and § 516.36 sets forth consequences for insufficient quantities of MUMS-designated drugs.

Description of Respondents: The respondents to this information collection are pharmaceutical companies that sponsor new animal drugs.

In the **Federal Register** of August 22, 2016 (81 FR 56658), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
516.20; Content and format of MUMS request	15	5	75	16	1,200
516.26; Requirements for amending MUMS designation	3	1	3	2	6
516.27; Change in sponsorship	1	1	1	1	1
516.29; Termination of MUMS designation	2	1	2	1	2
516.30; Requirements of annual reports	15	5	75	2	150
516.36; Insufficient quantities	1	1	1	3	3
Total					1,362

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this reporting requirement was derived in our Office of Minor Use and Minor Species Animal Drug Development by extrapolating the investigational new animal drug/new animal drug application reporting requirements for similar actions by this same segment of the regulated industry and from previous interactions with the minor use/minor species community.

Dated: December 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–30770 Filed 12–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of HHS (the Secretary) is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, MD 20857; (301) 443–6593, or visit our Web site at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to

serve a copy of the petition on the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on November 1, 2016, through November 30, 2016. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: December 15, 2016.

James Macrae,

Acting Administrator.

List of Petitions Filed

1. Linda Alvarez, Mankato, Minnesota, Court of Federal Claims No: 16–1438V.
2. Erika Reeder, Philadelphia, Pennsylvania, Court of Federal Claims No: 16–1439V.
3. Shelly Thompson, Wellesley, Massachusetts, Court of Federal Claims No: 16–1440V.
4. Wesley Dumas, Jacksonville, Florida, Court of Federal Claims No: 16–1441V.
5. Donna Huddy, Washington, District of Columbia, Court of Federal Claims No: 16–1442V.
6. Allen M. Horst, Goshen, Indiana, Court of Federal Claims No: 16–1443V.
7. Mary Jane Corn, Southport, North Carolina, Court of Federal Claims No: 16–1445V.
8. Indigo Grant on behalf of Mason Grant, White Plains, New York, Court of Federal Claims No: 16–1446V.
9. Kathleen Scarpato, York, Pennsylvania, Court of Federal Claims No: 16–1448V.
10. Mark Johnson, Dayton, Ohio, Court of Federal Claims No: 16–1449V.
11. Judith Isacoff, Arlington, Virginia, Court of Federal Claims No: 16–1450V.
12. Laurel Powell, Pocatello, Idaho, Court of Federal Claims No: 16–1452V.
13. Guy Irwin, Vienna, Virginia, Court of Federal Claims No: 16–1454V.
14. Patricia Barabas, Linwood, New Jersey, Court of Federal Claims No: 16–1455V.
15. Troy Duval, Greenville, Wisconsin, Court of Federal Claims No: 16–1456V.
16. Denise Goring, Chicago, Illinois, Court of Federal Claims No: 16–1458V.
17. Tommy Calhoun on behalf of Nancy Calhoun, Norwalk, Ohio, Court of Federal Claims No: 16–1459V.
18. Lance Antolick and Alyson Antolick on behalf of L. A., Huntsville, Alabama, Court of Federal Claims No: 16–1460V.
19. Gail Dirksen, Minot, North Dakota, Court of Federal Claims No: 16–1461V.
20. Eliseo Rael, Pittsburgh, Pennsylvania, Court of Federal Claims No: 16–1462V.
21. Abby Dux, Boston, Massachusetts, Court of Federal Claims No: 16–1463V.
22. Gerald Temes, Louisville, Kentucky, Court of Federal Claims No: 16–1465V.
23. Stacy Ginn and Jennifer Ginn on behalf of R. G., Boston, Massachusetts, Court of Federal Claims No: 16–1466V.
24. Lindsay Hiatt, Templeton, California, Court of Federal Claims No: 16–1467V.
25. Susan Ross, White Plains, New York, Court of Federal Claims No: 16–1468V.
26. Mohammed K. Alam and Jannatul Mumtarina on behalf of T. M., New York, New York, Court of Federal Claims No: 16–1469V.
27. Candace Singer, Camp Hill, New York, Court of Federal Claims No: 16–1470V.
28. Staci Pohodich, Dallas, Texas, Court of Federal Claims No: 16–1471V.
29. Robert Wallace, Sandusky, Ohio, Court of Federal Claims No: 16–1472V.
30. Cynthia Cooper, Washington, District of Columbia, Court of Federal Claims No: 16–1476V.
31. Philip Ngo on behalf of Adrianna Ngo, Portland, Oregon, Court of Federal Claims No: 16–1478V.
32. Tamara Chavez on behalf of T. C., Piermont, New York, Court of Federal Claims No: 16–1479V.
33. Erin McLane, Bethlehem, Pennsylvania, Court of Federal Claims No: 16–1480V.
34. Stephanie Foster, Flowood, Mississippi, Court of Federal Claims No: 16–1484V.
35. Doreen Stewart on behalf of The Estate of Marie Cavallaro, Deceased, Cairo, New York, Court of Federal Claims No: 16–1486V.
36. Amanda Holder, Anniston, Alabama, Court of Federal Claims No: 16–1490V.
37. Patricia Walling, Nowata, Oklahoma, Court of Federal Claims No: 16–1493V.
38. Ebonie Weaver on behalf of T. M., Chicago, Illinois, Court of Federal Claims No: 16–1494V.
39. Brian Cassidy, Patchogue, New York, Court of Federal Claims No: 16–1495V.
40. Rachel Koenig, New York, New York, Court of Federal Claims No: 16–1496V.
41. Donna Mae Coneley, Spearfish, South Dakota, Court of Federal Claims No: 16–1497V.
42. Fredric Kerns, Boston, Massachusetts, Court of Federal Claims No: 16–1498V.
43. Patricia A. Spayde, Chesaning, Michigan, Court of Federal Claims No: 16–1499V.
44. Charles E. Sumner, Houston, Texas, Court of Federal Claims No: 16–1500V.
45. Darrell G. Mayo, Suffolk, Virginia, Court of Federal Claims No: 16–1502V.
46. Ginger Smith, Rochester, New York, Court of Federal Claims No: 16–1503V.
47. Anthony D. Maddox, Murfreesboro, Tennessee, Court of Federal Claims No: 16–1504V.

48. Omar M. Villarroel, Rockford, Illinois, Court of Federal Claims No: 16–1505V.
49. James F. Dunn, Pittsburgh, Pennsylvania, Court of Federal Claims No: 16–1506V.
50. Jacquelynn Hernandez, Galveston, Texas, Court of Federal Claims No: 16–1508V.
51. Martha Shackelford, Houston, Texas, Court of Federal Claims No: 16–1509V.
52. Jenna Karakatsanis, Knoxville, Tennessee, Court of Federal Claims No: 16–1511V.
53. Arthur Zerbey, Boston, Massachusetts, Court of Federal Claims No: 16–1514V.
54. Carlos Barrantes-Vargas, Monmouth, New Jersey, Court of Federal Claims No: 16–1515V.
55. Bernadette Skorupska on behalf of N. S., New York, New York, Court of Federal Claims No: 16–1517V.
56. John Prater, Taylor, Michigan, Court of Federal Claims No: 16–1518V.
57. Scott Rodemoyer, North Canton, Ohio, Court of Federal Claims No: 16–1519V.
58. Renee Woods and Ryan Woods on behalf of T. W., Plano, Texas, Court of Federal Claims No: 16–1520V.
59. Jeanne Ivester, Cincinnati, Ohio, Court of Federal Claims No: 16–1522V.
60. Alla Goldman, Roseland, New Jersey, Court of Federal Claims No: 16–1523V.
61. Jamin Rader, Seattle, Washington, Court of Federal Claims No: 16–1524V.
62. Ariadna Nacianceno, Chapel Hill, North Carolina, Court of Federal Claims No: 16–1525V.
63. Janice Creighton, Richmond, California, Court of Federal Claims No: 16–1526V.
64. Rosalinda Vohs, San Antonio, Texas, Court of Federal Claims No: 16–1527V.
65. Glenda Garnsey, Georgetown, Delaware, Court of Federal Claims No: 16–1528V.
66. Joy Gilley, Burleson, Texas, Court of Federal Claims No: 16–1529V.
67. Crystal Adkins, Fredericksburg, Virginia, Court of Federal Claims No: 16–1530V.
68. Sharon Farnsworth, Garnett, Kansas, Court of Federal Claims No: 16–1531V.
69. Margaret R. Marsh, Clemmons, North Carolina, Court of Federal Claims No: 16–1532V.
70. Heather Ryan, Baton Rouge, Louisiana, Court of Federal Claims No: 16–1533V.
71. Christine Rogers, Mansfield, Ohio, Court of Federal Claims No: 16–1534V.
72. Edithe Swensen, Clinton Park, New York, Court of Federal Claims No: 16–1535V.
73. Sheri Rocca, Cleveland, Ohio, Court of Federal Claims No: 16–1537V.
74. Raymond Fowler, Kennebunk, Maine, Court of Federal Claims No: 16–1538V.
75. Alan L. Hayward, Mason City, Iowa, Court of Federal Claims No: 16–1539V.
76. Dena McElerney and Patrick McElerney on behalf of C. M., Lithia, Florida, Court of Federal Claims No: 16–1540V.
77. Tina L. Eskelin, Beverly Hills, California, Court of Federal Claims No: 16–1543V.
78. David Novak, Chardon, Ohio, Court of Federal Claims No: 16–1544V.
79. Deborah B. Brown, Chapel Hill, North Carolina, Court of Federal Claims No: 16–1547V.
80. Kevin Kelly, Lebanon, Pennsylvania, Court of Federal Claims No: 16–1548V.
81. Kristi Marquardt, La Jolla, California, Court of Federal Claims No: 16–1551V.
82. Monica Portee, Columbia, South Carolina, Court of Federal Claims No: 16–1552V.
83. Claudia Cipowski, Munster, Indiana, Court of Federal Claims No: 16–1553V.
84. Lisa Barker, Jacksonville, Florida, Court of Federal Claims No: 16–1554V.
85. Linda Rees, Belton, Missouri, Court of Federal Claims No: 16–1555V.
86. Ashraf Mostafa, Towson, Maryland, Court of Federal Claims No: 16–1558V.
87. Dorothy Felix, Grand Rapids, Michigan, Court of Federal Claims No: 16–1560V.
88. Janice Sloan, Mt. Juliet, Tennessee, Court of Federal Claims No: 16–1561V.
89. Virginia Vahle, Lee, Massachusetts, Court of Federal Claims No: 16–1562V.
90. Valerie W. Alexander, Mankato, Minnesota, Court of Federal Claims No: 16–1563V.
91. Ron W. Flood, Spokane, Washington, Court of Federal Claims No: 16–1564V.
92. Eardeal Miller, Northport, Alabama, Court of Federal Claims No: 16–1566V.
93. Laura Winters, Wellesley Hills, Massachusetts, Court of Federal Claims No: 16–1570V.
94. Joseph J. Pass, Pittsburgh, Pennsylvania, Court of Federal Claims No: 16–1572V.
95. Donald D. Dix, Lincoln, Nebraska, Court of Federal Claims No: 16–1574V.
96. Melissa Howie, Dublin, Ohio, Court of Federal Claims No: 16–1575V.
97. James Abdelnour, Fairhaven, Massachusetts, Court of Federal Claims No: 16–1580V.
98. Della Cantrell, Long Beach, California, Court of Federal Claims No: 16–1581V.
99. Christy Heil, Grove City, Ohio, Court of Federal Claims No: 16–1582V.
100. Betsy Graham, North Attleboro, Massachusetts, Court of Federal Claims No: 16–1583V.
101. Angelina Grujic, Boston, Massachusetts, Court of Federal Claims No: 16–1586V.
102. Michael Johnson, Boston, Massachusetts, Court of Federal Claims No: 16–1587V.
103. William Vanjura, Moberly, Missouri, Court of Federal Claims No: 16–1588V.
104. Claire Dunne, Chicago, Illinois, Court of Federal Claims No: 16–1590V.
105. Marc Howard, Fairhope, Alabama, Court of Federal Claims No: 16–1592V.
106. Timothy Krusemark, Granger, Indiana, Court of Federal Claims No: 16–1593V.

[FR Doc. 2016–30783 Filed 12–21–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: 0990–0448–30D]

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 renewal of the approved information collection assigned OMB control number 0990–0448, scheduled to expire on December 31, 2016. 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 January 23, 2017.

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) 690–5683.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier 0990–0448–30D for reference.

Information Collection Request Title: Surgeon General's Pledge to End the Opioid Crisis.

OMB No.: 0990–0448.

Abstract: This information collection is a critical component of a campaign to encourage health care prescribers (the user) to take action in their clinical practice to reduce the number of prescription drug overdoses and reduce the likelihood of prescription opioid drugs ending up in the possession of those who may abuse them. This information collection involves obtaining user contact information, medical profession category, medical specialty, and responses to short questions specifically designed to provide anecdotal information and contextualize the impact of the prescription opioid epidemic.

Need and Proposed Use of the Information: This information collection serves to gather contact information from clinical prescribers and responses to two short answer questions describing how prescription opioid addiction has impacted their patients and/or their practice. Zip code, profession, and specialty will be collected and analyzed to present aggregate pledge data. Each element will also be utilized to send personalized campaign communication. Understanding the demographics of the medical practitioners will improve the efficacy of the campaign to end opioid

abuse by allowing for targeted communication.

Likely Respondents: Medical Prescribers.

The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Opioid Pledge Form	5,000	1	5/60	416.67
Total	5,000	1	5/60	416.67

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–30787 Filed 12–21–16; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: 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 January 23, 2017.

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) 690–5683.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier 0990–New–30D for reference.

Information Collection Request Title: National Tissue Recovery through Utilization Survey (NTRUS).

Abstract: The Office of the Assistant Secretary for Health, Department of Health and Human Services, is requesting OMB approval on a new ICR. This survey is being conducted to generate national estimates of recovery through utilization activity; of donated human tissue for calendar years 2012 and 2015, and to compare metrics across three data collection periods that includes results from a 2007 survey, the most recent year these data were collected. The survey and data collection and analysis methods will be similar to the 2007 survey. The general categories of information to be collected are listed under the Survey Section of the Annualized Burden Hour table below.

Need and Proposed Use of the Information: Policy advice provided by the HHS Advisory Committee on Blood and Tissue Safety and Availability to the HHS Secretary and Assistant Secretary for Health is used to direct departmental efforts to address transfusion and transplantation issues, such as emergency preparedness and infectious disease transmission related to donated human tissue. The advice provided is partly dependent on analysis of relevant information, such as tissue collection through utilizations data.

Likely Respondents: Respondents for this survey would be U.S. tissue banks that screen and recover tissue from living and deceased donors, and process, store, and/or distribute tissues grafts for transplantation from these donors.

The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Survey section	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
All tissue banks	Tissue bank activities, tissue types handled, and inspections.	110	1	10/60	18.33
Tissue banks that handle referrals, Recover/acquire tissue.	Referrals, authorization, and informed consent; Tissue recovery and acquisition.	80	1	1	80
Tissue banks that process tissue	Tissue processing	35	1	1	35
Tissue banks that store tissue	Tissue storage	65	1	20/60	21.67
Tissue banks that distribute tissue	Tissue distribution	58	1	30/60	29
Tissue banks that have donor infectious disease testing performed and may handle adverse outcome reports.	Communicable disease testing and adverse outcome reports.	35	1	1	35
Total					219

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–30786 Filed 12–21–16; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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; 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.

Proposed Project: Children's Mental Health Initiative National Evaluation—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) is requesting approval from the Office of Management and Budget (OMB) for the new collection of data for the Children's Mental Health Initiative (CMHI) National Evaluation.

Evaluation Plan and Data Collection Activities. The purpose of the Children's Mental Health Initiative (CMHI) National Evaluation is to assess the success of the CMHI grants in expanding and sustaining the reach of SOC values, principles, and practices. These include maximizing system-level coordination and planning, offering a comprehensive array of services, and prioritizing family and youth involvement. In order to obtain a clear picture of CMHI grant activities, this longitudinal, multi-level evaluation will measure activities and performance of grantees essential to building and sustaining effective Systems of Care (SOC)'s.

Data collection activities will occur through four evaluation components. Each component includes data collection activities and analyses involving similar topics. Each component has one or more instruments that will be used to address various aspects. The four components with their corresponding data collection activities are as follows:

(1) The Implementation Assessment is designed using a strategic framework that provides five analytic dimensions: (1) Policies, (2) services/supports, (3) financing, (4) training/workforce, and (5) strategic communications. These dimensions cut across the State System, Local System and Service Delivery levels and together link to a range of proximal and distal outcomes. The evaluation will identify and assess the mechanisms and strategies employed to implement and expand systems of care, and explore the impact on system performance and child and family outcomes. Evaluation activities are framed by the five strategic areas to examine whether specific mechanisms and strategies lead to proximal and distal outcomes. System of care principles are woven throughout the framework at both the State and Local levels. Data collection activities include: (A) *Key Partner Interviews* with high-level administrators, youth and family representatives, and child agencies to organize qualitative data collection into these five areas and to allow within and across grantee evaluation of the implementation and impact of activities in these areas; and (B) the *System of Care Expansion and Sustainability Survey (SOCESS),* a self-report survey administered to representatives from grantee organizations, family and youth organizations, child-serving sectors, advocacy organizations for diverse populations, provider organizations, and financial officers, among others. The SOCESS is designed to capture self-report implementation data in the five analytic dimensions adopted by the 2015 CMHI National Evaluation.

(2) The Network and Geographic Analysis Component will use *Network Analysis Surveys* to determine the depth and breadth of the SOC collaboration across agencies and organization. *Geographic Information Systems (GIS*) will measure the geographic coverage and spread of the SOC, including reaching underserved areas and populations. At the child/youth and family level, Census block groups (derived from home addresses) will be used to depict the geographic spread of populations served by SOCs.

(3) The Financial Component involves the review of implementation grantees' progress in developing financial sustainability and expansion plans. The *Financial Mapping Interview and Financing Plan Survey and Interviews* will be conducted with financial administrators of Medicaid Agencies, Mental Health Authorities, mental health provider trade associations, and family organizations. The Financial Plan Interview will focus on how the financial planning process supported or hindered attainment of sustainable financing. The *Benchmarking Analysis* will compare relative rates of access, utilization, and costs for children's mental health services using the Benchmarking Tool and administrative data requested from financial administrators and personnel working with Medicaid Agency and Mental Health Authority reporting and payment systems.

(4) The Child and Family Outcome Component will collect longitudinal data on child clinical and functional outcomes, family outcomes, and child and family background. Data will be collected at intake, 6-months, and 12-months post service entry (as long as the child/youth is still receiving services). Data will also be collected at discharge if the child/youth leaves services before the 12-month data collection point. Data will be collected using the following scales for youth age five and older: (A) A shortened version of the Caregiver Strain Questionnaire, (B) the Columbia Impairment Scale, (C) the Pediatric Symptom Checklist-17, and (D) background information gathered through SAMHSA National Outcomes Measures (NOMS). Data for youth age 0–4 will be collected using the: (A) Baby Pediatric Symptom Checklist; (B) Brief Infant and Toddler Emotional Assessment; (C) Pre-School Pediatric Symptom Checklist and d) background information from the NOMS.

Estimated Burden. Data will be collected from 69 grantee sites. Data collection for this evaluation will be conducted over a 4-year period. The average annual respondent burden estimate reflects the average number of respondents in each respondent category, the average number of responses per respondent per year, the average length of time it will take to complete each response, and the total average annual burden for each category of respondent for all categories of respondents combined. Table 1 shows

the estimated annual burden estimate by instrument and respondent. Burden is summarized in Table 2.

TABLE 1—ESTIMATED ANNUAL BURDEN

Instrument/data collection activity	Respondent	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total annual burden hours
Implementation Assessment						
Key Partner Interviews	Project Director	84	2	168	1.5	252
	Family Organization Representative.	54	2	108	1.5	162
	Youth Organization Representative.	54	2	108	1.5	162
	MH Agency Director	54	2	108	1.5	162
	Core Agency Partners [b]	162	2	324	0.75	243
	Quality Monitor	54	2	108	0.33	36
SOCESS	Project Director	84	4	336	0.5	168
	Family Organization Representative.	108	4	432	0.5	216
	Youth Organization Representative.	108	4	432	0.5	216
	Core Agency Partners	432	4	1,728	0.5	864
	Practitioners	690	4	2,760	0.5	1,380
Network Analysis Survey						
Network Analysis Survey	Key Agency Partners	690	2	1,380	0.5	690
Financial Mapping and Benchmark Components						
Financial Mapping Interview	Financial administrators at: Medicaid Agencies & MH Authorities	108	2	216	0.75	162
	Financial administrators at: Trade associations & Family organizations.	108	2	216	0.5	108
	Tribal Financial Administrators.	9	2	18	0.75	14
Benchmark Tool	Payment personnel at Medicaid Agencies & MH Authorities.	12	2	24	40	960
Financial Plan Interviews	Financial Planning Directors	54	3	162	0.6	97
Child and Family Outcome Component						
Administrative Measures	Caregivers of clients age 0–17 [c].	4,136	1	4,136	0.05	207
	Clients age 11–26	1,685	1	1,685	0.05	84
Client Functioning	Caregivers of clients age 0–17 [c].	4,136	3	12,408	0.15	1,861
	Clients age 11–26 [d]	970	3	2,910	0.15	437
Caregiver Strain Questionnaire.	Caregivers of clients age 0–17 [c].	4,136	3	12,408	0.15	1,861
Columbia Impairment Scale	Caregivers of clients age 5–17 [e].	2,859	3	8,577	0.08	686
	Clients age 11–26 [d]	2,655	3	7,965	0.08	637
Pediatric Symptom Checklist-17.	Caregivers of clients age 5–17 [e].	2,859	3	8,577	0.05	429
	Clients age 11–26 [d]	2,655	3	7,965	0.05	398
New Tools in 2015						
Brief Infant and Toddler Emotional Assessment (BITSEA).	Caregivers of children and youth 0 to 5 years of age [f].	1,277	3	3,831	0.08	306
Baby Pediatric Symptom Checklist (BPSC).	Caregivers of children and youth for ages 1 month to 18 months [f].	638	3	1,914	0.05	96
Preschool Pediatric Symptom Checklist (PPSC).	Caregivers of children and youth for ages 18 months to 66 months [f].	639	3	1,917	0.05	96

TABLE 1—ESTIMATED ANNUAL BURDEN—Continued

Instrument/data collection activity	Respondent	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total annual burden hours
Total Annual Burden						
All	All [g]	12,107		36,354		12,990

[a] Based on the average hourly wages for Community and Social Service Specialists, All Other (21–1099; $22.47) and Social Workers (21–1020; $29.83) from the May 2015 National Industry-Specific Occupational Employment and Wage Estimates, 621330—Offices of Mental Health Practitioners; the Federal minimum wage of $7.25; and an estimated average hourly wage of $11.60 for a family of four living 25% below poverty level.
[b] Core agency partners include (1) representatives from MH, child welfare, and juvenile justice and (2) CMHI quality monitors.
[c] Assumes 81% of clients will be age 0 to 17.
[d] Assumes 52% of clients will be age 11 to 26.
[e] Assumes 56% of clients will be age 5 to 17.
[f] Assumes 25% of clients will be age 0 to 5, with 12.5% of clients age 0 to 2.5, and 12.5% age 2.6 to 5).
[g] Sums shown indicate unduplicated respondents and responses per respondent.

TABLE 2—TOTAL ESTIMATED ANNUAL BURDEN

Instrument/data collection activity	Number of respondents	Total number of responses	Average annual burden (hours)
Key Partner Interview	462	924	339
SOCESS	1,422	5,688	948
Network Analysis Survey	690	1,380	230
Financial Mapping Interview	225	450	95
Benchmark Tool	12	24	320
Financial Planning	54	162	32
Child and family instruments	9,242	27,726	2,366
Total	12,107	36,354	4,330

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received by February 21, 2017.

Summer King,

Statistician.

[FR Doc. 2016–30809 Filed 12–21–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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; 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.

Proposed Project: 2017–2020 National Survey on Drug Use and Health: Methodological Field Tests (OMB No. 0930–0290)—Extension

The National Survey on Drug Use and Health (NSDUH) is a survey of the U.S. civilian, non-institutionalized population aged 12 years old or older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, the Office of National Drug Control Policy (ONDCP), federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

Methodological tests will continue to be designed to examine the feasibility, quality, and efficiency of new procedures or revisions to existing survey protocol. Specifically, the tests will measure the reliability and validity of certain questionnaire sections and items through multiple measurements on a set of respondents; assess new methods for gaining cooperation and participation of respondents with the goal of increasing response and decreasing potential bias in the survey estimates; and assess the impact of new sampling techniques and technologies on respondent behavior and reporting. Research will involve focus groups, cognitive laboratory testing, customer satisfaction surveys, and field tests.

These methodological tests will continue to examine ways to increase data quality, lower operating costs, and gain a better understanding of sources and effects of nonsampling error on NSDUH estimates. Particular attention will be given to minimizing the impact of design changes so survey data continue to remain comparable over time. If these tests provide successful results, current procedures or data collection instruments may be revised.

The number of respondents to be included in each field test will vary,

depending on the nature of the subject being tested and the target population. However, the total estimated response burden is 8,225 hours. The exact number of subjects and burden hours for each test are unknown at this time, but will be clearly outlined in each individual submission. These estimated burden hours are distributed over three years as follows:

TABLE 1—ESTIMATED BURDEN FOR NSDUH METHODOLOGICAL FIELD TESTS

Time period	Respondent burden hours
May 2017 to May 2018	2,742
May 2018 to May 2019	2,742
May 2019 to May 2020	2,741
Total	8,225

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received by February 21, 2017.

Summer King,

Statistician.

[FR Doc. 2016–30808 Filed 12–21–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4292–DR; Docket ID FEMA–2016–0001]

Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–4292–DR), dated December 2, 2016, and related determinations.

DATES: *Effective Date:* December 2, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 2, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania resulting from severe storms and flooding during the period of October 20–21, 2016, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Steven S. Ward, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Pennsylvania have been designated as adversely affected by this major disaster:

Bradford, Centre, Lycoming, and Sullivan Counties for Public Assistance.

All areas within the Commonwealth of Pennsylvania are eligible for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–30802 Filed 12–21–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Open Federal Advisory Committee Meeting.

SUMMARY: The Board of Visitors for the National Fire Academy (Board) will meet via teleconference on January 10, 2017. The meeting will be open to the public.

DATES: The meeting will take place on Tuesday, January 10, 2017, from 1:00 to 3:00 p.m. Eastern Daylight Time. Please note that the meeting may close early if the Board has completed its business.

ADDRESSES: Members of the public who wish to participate in the teleconference should contact Ruth MacPhail as listed in the **FOR FURTHER INFORMATION CONTACT** section by close of business January 8, 2017, to obtain the call-in number and access code. For information on services for individuals with disabilities or to request special assistance, contact Ruth MacPhail as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Board as listed in the **SUPPLEMENTARY INFORMATION** section. Comments must be submitted in writing no later than January 8, 2017, and must be identified by Docket ID FEMA–2008–0010 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FEMA-RULES@fema.dhs.gov.* Include the docket number in the subject line of the message.

• *Mail/Hand Delivery:* Ruth MacPhail, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov,* click on ''Advanced Search,'' then enter ''FEMA–2008–0010'' in the ''By Docket ID'' box, then select ''FEMA'' under ''By Agency,'' and then click ''Search.''

FOR FURTHER INFORMATION CONTACT:

Alternate Designated Federal Officer: Kirby E. Kiefer, telephone (301) 447–1117, email *Kirby.Kiefer@fema.dhs.gov.*

Logistical Information: Ruth MacPhail, telephone (301) 447–1333 and email *Ruth.Macphail@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

Purpose of the Board

The purpose of the Board is to review annually the programs of the National Fire Academy (NFA) and advise the Administrator of the Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, on the operation of the NFA and any improvements therein that the Board deems appropriate. In carrying out its responsibilities, the Board examines NFA programs to determine whether these programs further the basic missions that are approved by the Administrator of FEMA, examines the physical plant of the NFA to determine the adequacy of the NFA's facilities, and examines the funding levels for NFA programs. The Board submits a written annual report through the United States Fire Administrator to the Administrator of FEMA. The report provides detailed comments and recommendations regarding the operation of the NFA.

Agenda

1. The Board will receive updates on U.S. Fire Administration data, research, and response support initiatives.

2. The Board will receive updates on deferred maintenance and capital improvements on the National Emergency Training Center campus and budget planning.

3. The Board will deliberate and vote on recommendations on NFA program activities, including:

• Empanel a subcommittee to evaluate and make recommendations concerning the Executive Fire Officer program to include curriculum, projects and other requirements;

• A progress report to readdress the educational requirements of the Managing Officer Program, a multi-year curriculum that introduces emerging emergency services leaders to personal and professional skills in change management, risk reduction, and adaptive leadership;

• Activity reports on the following subcommittees: Professional Development Initiative, Whole Community, and National Fire Incident Reporting System Subcommittee;

• Executive Fire Officer Program Symposium held on September 8–10, 2016;

• Mediated online training update.

There will be a 10-minute comment period after each agenda item; each speaker will be given no more than 2 minutes to speak. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact Ruth MacPhail to register as a speaker. Meeting materials will be posted at *https://www.usfa.fema.gov/training/nfa/about/bov.html* by December 19, 2016.

Dated: December 16, 2016.

Kirby E. Kiefer,

Acting Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2016–30800 Filed 12–21–16; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4206–DR; Docket ID FEMA–2016–0001]

Soboba Band of Luiseño Indians; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Soboba Band of Luiseño Indians (FEMA–4206–DR), dated January 27, 2015, and related determinations.

DATES: *Effective Date:* November 30, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 30, 2016, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to W. Craig Fugate, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage to the lands associated with the Soboba Band of Luiseño Indians resulting from severe storms, flooding, and mudslides during the period of December 4–6, 2014, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend my declaration of January 27, 2015, to authorize Federal funds for all categories of Public Assistance at 90 percent of total eligible costs.

This adjustment to the cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–30801 Filed 12–21–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–R–2016–N139; FF06R06000–FXRS12610600000–178]

Establishment of Bear River Watershed Conservation Area, Idaho, Wyoming, and Utah

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has established the Bear River Watershed Conservation Area, the 565th unit of the National Wildlife Refuge System. The Service established the Bear River Watershed Conservation Area on June 28, 2016, with the donation of approximately 30 acres in Box Elder County, Utah.

ADDRESSES: A map depicting the approved Refuge boundary and other information regarding the Refuge is available on the Internet at *https://www.fws.gov/mountain-prairie/refuges/lpp_brr.php.*

FOR FURTHER INFORMATION CONTACT: Toni Griffin, Planning Team Leader, Refuge Planning Branch, USFWS, P.O. Box 25486, DFC, Denver, CO 80225; 303–236–4378.

SUPPLEMENTARY INFORMATION: The Service established the Bear River Watershed Conservation Area, which encompasses more than 4.5 million acres in the States of Idaho, Wyoming, and Utah, in 2013. The establishment of the conservation area authorizes the Service to work in partnership with private landowners to conserve wildlife habitat through perpetual easements. Bear Lake National Wildlife Refuge, Bear River Migratory Bird Refuge, Cokeville Meadows National Wildlife Refuge, and Oxford Slough Waterfowl Production Area are previously established National Wildlife Refuge System (Refuge System) units within the watershed that are largely owned in fee-title. Along with the existing refuge units in the watershed, the conservation area supports more than 200 species of birds, particularly migratory birds within the Central and Pacific Flyways. The conservation area also provides habitat and important migratory linkages for many mammals, such as elk and pronghorn; and its rivers and lakes support a number of native fish species, such as Bonneville cutthroat trout. The Bear River is the largest surface water source for the Great Salt Lake ecosystem and is the meeting point of the Great Basin and Southern Rockies in the region. The Service will work with conservation partners and landowners to protect priority habitat for priority native species such as the American avocet, Bonneville cutthroat trout, greater sage-grouse, and sage thrasher on up to 920,000 acres in the 4.5-million-acre watershed. This goal will be accomplished primarily through the purchase of perpetual conservation easements from willing sellers in Idaho, Wyoming, and Utah.

The Service recognizes the importance of working with private landowners and other partners for mutual conservation interests. Farming and ranching have played an essential role in conserving valuable fish and wildlife habitat throughout the Bear River watershed.

The establishment of the Bear River Watershed Conservation Area allows the Service to purchase conservation easements using the acquisition authority of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–j). The federal money used to acquire conservation easements is primarily from the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460l–4 through 11) (derived primarily from oil and gas leases on the Outer Continental Shelf, motorboat fuel taxes, and the sale of surplus Federal property). Additional funding to acquire lands, water, or interests for fish and wildlife conservation purposes could be identified by Congress or donated by nonprofit organizations.

The Service has involved the public, agencies, partners, and legislators throughout the planning process for the easement program. At the beginning of the planning process, the Service initiated public involvement for the proposal to protect habitats primarily through acquisition of conservation easements for management as part of the Refuge System. The Service spent time discussing the proposed project with landowners; conservation organizations; Federal, State and County government agencies; Tribes; and other interested groups and individuals in Idaho, Wyoming, and Utah. These open houses were announced in local media.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Service prepared an environmental assessment (EA) that evaluated two alternatives and their potential impacts on the project area. The Service released the draft EA and land protection plan (LPP), on November 28, 2012, for a 32-day public review period. The draft documents were made available to federal elected officials and agencies, state elected officials and agencies, Native American Tribes with aboriginal or tribal interests, and other members of the public that were identified during the scoping process that included six public meetings. The Service held six additional open-house public meetings to discuss the draft EA and LPP on December 4, 2012 in Logan, Utah; December 5, 2012 in Randolph, Utah; December 6, 2012 in Montpelier, Idaho; December 7, 2012 in Preston, Idaho; December 10, 2012 in Cokeville, Wyoming; and December 11, 2012 in Evanston, Wyoming. These meetings were announced in advance in local media. Approximately 213 landowners, citizens, and elected representatives attended the meetings. The Service received 19 letters from agencies, organizations, and other entities, and 260 general public comments. After all comments were received, they were reviewed and incorporated into the EA and administrative record.

Based on the documentation contained in the EA, a Finding of No Significant Impact was signed on February 27, 2013, and approval from Director Dan Ashe was received on May 1, 2013, for the establishment of the Bear River Watershed Conservation Area.

Dated: August 15, 2016.

Matt Hogan,

Regional Director, Mountain-Prairie Region.

[FR Doc. 2016–30826 Filed 12–21–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX.16.CG00.GDQ03.00]

Agency Information Collection Activities: Request for Comments on the Yukon-Kuskokwim Delta Berry Outlook Survey

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection, Yukon-Kuskokwim Delta Berry Outlook.

SUMMARY: We (the U.S. Geological Survey) are notifying the public that we have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) 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 ICR.

DATES: To ensure that your comments on this ICR are considered, OMB must receive them on or before January 23, 2017.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email: (*OIRA_SUBMISSION@omb.eop.gov;* identify your submission with 'OMB Control Number 1028–NEW Yukon-Kuskokwim Delta Berry Outlook. Please also forward a copy of your comments and suggestions on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, *gs-info_collections@usgs.gov* (email). Please reference 'OMB Information Collection 1028–NEW: Yukon-Kuskokwim Delta Berry Outlook in all correspondence.

FOR FURTHER INFORMATION CONTACT: Nicole Herman-Mercer, National Research Program, Central Branch, U.S. Geological Survey, Denver Federal Center, Mail Stop 418, Denver, CO 80225 (mail); 303–236–5031 (phone); or *nhmercer@usgs.gov* (email). You may also find information about this ICR at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Yukon-Kuskokwim (YK) Delta Berry Outlook is a data and observer driven ecological monitoring and modeling framework that forecasts changes in berry habitat and abundance with climate and environmental change. In order to create a monitoring protocol and modeling framework we will solicit local knowledge of berry distribution and abundance from members of Yukon-Kuskokwim communities. Participants from the communities will take part in a survey that asks yes or no questions about the timing, abundance, and distribution of three types of berries that are important in their communities. Personally Identifiable Information (PII) will be limited to four elements: Names, phone numbers, emails, and the name of the village they reside in. This PII will be collected in order to communicate project results and solicit feedback on the project itself for evaluation purposes. Statistical analysis will be performed on survey responses in order to ascertain if a consensus exists among participants within villages and among villages. The survey results will be one source of data used to create a model forecasting changes in Tribal food sources.

The USGS mission is to serve the Nation by providing reliable scientific information to describe and understand the Earth. This project will collect information from individuals to better understand the abundance, distribution, and variability of berry resources in the Yukon-Kuskokwim Delta region of Alaska. The people of the YK delta rely on wild berries for a substantial portion of their diet and hold information about the long term distribution and abundance of berries that is useful for understanding current and future changes to berry habitat due to climate change impacts that will effect both human and wildlife populations of the Yukon Delta region and the Yukon Delta National Wildlife Refuge.

II. Data

OMB Control Number: 1028–NEW.

Title: Yukon-Kuskokwim Delta Berry Outlook.

Type of Request: Approval of new information collection.

Respondent Obligation: None, participation is voluntary.

Frequency of Collection: One time.

Description of Respondents: Individuals; Tribal members that reside in the villages of Chevak, Hooper Bay, Kotlik, and Emmonak, Alaska.

Estimated Total Number of Annual Responses: Forty.

Estimated Time per Response: We estimate that it will take two hours per person to complete the survey.

Estimated Annual Burden Hours: Eighty hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

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. Until the OMB approves a collection of information, you are not obliged to respond.

Comments: On June 14, 2016, we published a **Federal Register** notice (Vol. 81 FR 38733) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on August 13, 2016. We received no comments.

III. Request for Comments

We again invite comments concerning this ICR 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) how 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 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 and the OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Lauren E. Hay,

Acting Branch Chief, National Research Program—Central Branch.

[FR Doc. 2016–30782 Filed 12–21–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/ A0A501010.999900 253G]

Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2018 or Calendar Year 2018

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a deadline of March 1, 2017, for Indian Tribes and consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2018 or calendar year 2018.

DATES: Completed application packages must be received by the Director, Office of Self-Governance, by March 1, 2017, at the address provided in the **ADDRESSES** section of this notice.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to Ms. Sharee M. Freeman, Director, Office of Self-Governance, Department of the Interior, Mail Stop 355–G–SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, Office of Self-Governance, Telephone (703) 390–6551.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Public Law 103–413), as amended, and section 1000.15(a) of title 25 of the Code of Federal Regulations, the Director, Office of Self-Governance may select up to 50 additional Tribes and consortia per year to participate in the Tribal self-governance program and negotiate and enter into a written funding agreement with each participating Tribe. The Act mandates that the Secretary of the Interior submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each Tribe that is served by the Bureau of Indian Affairs agency that is serving the Tribe that is a party to the funding agreement. Initial negotiations with a Tribe or consortium located in a region and/or agency which has not previously been involved with self-governance negotiations will take approximately two months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 funding year need to be signed and submitted by October 1.

Purpose of Notice

The regulations at 25 CFR 1000.10 to 1000.31 will govern the application and selection process for Tribes or consortia to begin their participation in the tribal self-governance program in fiscal year 2018 and calendar year 2018. Applicants should be guided by the requirements in these subparts in preparing their applications. Copies of these subparts may be obtained from the person identified in the **FOR FURTHER INFORMATION** section of this notice.

Tribes and consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2018 or calendar year 2018 must respond to this notice, except for those Tribes and consortia which are: (1) Currently involved in negotiations with the Department; or (2) one of the 118 Tribal entities with signed agreements.

Information Collection

This information collection is authorized by OMB Control Number 1076–0143, Tribal Self-Governance Program, which expires December 31, 2019.

Dated: December 13, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2016–30829 Filed 12–21–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/A0A501010.999900 253G]

Land Acquisitions; Puyallup Tribe of the Puyallup Reservation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire 9.39 acres, more or less, of land in trust for the Puyallup Tribe of the Puyallup Reservation for gaming and other purposes on November 29, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW., Washington, DC 202240, telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12 (c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

On November 29, 2016, the Assistant Secretary—Indian Affairs issued a decision to accept approximately 9.39 acres, more or less, of land in trust for the Puyallup Tribe of the Puyallup Reservation (Tribe), under the authority of the Puyallup Indian Tribe Land Claims Settlement Act of 2006, Pub. L. 109–224, 120 Stat. 376 (May 18, 2006). The Assistant Secretary—Indian Affairs determined that the Tribe's request also meets the requirements of the Indian Gaming Regulatory Act's ''on reservation'' exception, 25 U.S.C. 2719 (a)(1), to the general prohibition contained in 25 U.S.C. 2719 on gaming on lands acquired in trust after October 17, 1988.

The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title in the name of the United States of America in Trust for the Puyallup Tribe of the Puyallup Reservation upon fulfillment of Departmental requirements.

Legal Description

The 9.39 acres, more or less, are located in Pierce County, State of Washington, and are described as follows:

Parcel A: (Parcel No. 4715011512)

Lots 2 and 3, Block 7846, Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Except therefrom the north 20 feet thereof appropriated by the State of Washington in Judgment and Decree entered December 15, 1961 in Pierce County Superior Court Cause No. 148447, and

Except that portion of said Lot 2 conveyed to the City of Tacoma by Deed recorded under Auditor's No. 2435849.

Parcel B: (Parcel No. 4715011520)

Lots 4 and 5, Block 7846, Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel C: (Parcel No. 4715011550)

Lots 11 to 13, inclusive, Block 7846, Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Except that portion conveyed to the State of Washington by Deed recorded under Auditor's No. 1960494.

Parcel D: (Parcel No. 4715011580)

Lots 18 and 19, Block 7846, Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel E: (Parcel No. 4715011600)

Lots 24 and 25, Block 7846, Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel F: (Parcel No. 4715011610)

The north half of Lots 26, 27 and 28, Block 7846, Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel G: (Parcel No. 4715011640)

Lots 1 and 2, Block 7850, Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Except that portion condemned in Judgment entered March 20, 1961 in Pierce County Superior Court Cause No. 146264 for PSH No. 1 (1–5).

Parcel H: (Parcel No. 4715011651)

Lots 3 and 4, Block 7850, Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington, lying southwesterly of a line drawn parallel with and 62.5 feet southwesterly, when measured radially, from the 5E Line Survey of State Highway Route No. 5 (PSH No. 1) Tacoma: East R Street to E. Corp. Limits.

Parcel I: (Parcel No. 4715012050)

Lots 9, 10 and the west half of Lot 11, Block 7945, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel J: (Parcel No. 4715012060)

The east half of Lot 11 and all of Lots 12 and 13, Block 7945, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel K: (Parcel No. 4715012070)

Lots 14 and 15, Block 7945, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel L: (Parcel No. 4715012080)

Lots 16 and 17, Block 7945, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel M: (Parcel No. 4715012100)

The east half of Lot 19 and all of Lot 20, Block 7945, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel O: (Parcel No. 4715012120)

Lots 23 and 24, Block 7945, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel P: (Parcel No. 4715012300)

Lots 1, 2 and 3, Block 7949, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel Q: (Parcel No. 4715012310)

Lots 4 and 5, Block 7949, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Except that portion of said Lots 4 and 5 condemned by the State of Washington for PSH No. 1 (1–5) by Decree entered December 16, 1961 in Pierce County Superior Court Cause No. 146949.

Parcel R: (Parcel No. 4715012330)

Lots 6 and 7, Block 7949, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Except that portion of said Lots 6 and 7 conveyed to the State of Washington under Auditor's No. 1918323.

Parcel S: (Parcel No. 4715012344)

All that portion of Lots 8 to 11, inclusive, Block 7949, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington, lying southerly of a line drawn parallel with and 62.5 feet southerly of the 5E Center Line Survey of SR 5 (PSH No. 1) Tacoma: East R Street to East corporate limits.

Except from said Block 7949 that portion thereof lying within Primary State Highway No. 5.

Parcel T: (Parcel No. 4715012151)

Lots 1 and 2, Block 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Except the west 18 feet of Lot 1 conveyed to the City of Tacoma by Deed recorded under Auditor's No. 8508260151.

Parcel U: (Parcel No. 4715012160)

Lots 3 and 4, Block 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel V: (Parcel No. 4715012170)

Lots 5 and 6, Book 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel W: (Parcel No. 4715012180)

Lot 7 and the west 20 feet of Lot 8, Block 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel X: (Parcel No. 4715012190)

The east 5 feet of Lot 8, all of Lot 9 and the west 15 feet of Lot 10, Block 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel Y: (Parcel No. 4715012200)

The east 10 feet of Lot 10, all of Lot 11 and the west 10 feet of Lot 12, Block 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel Z: (Parcel No. 4715012210)

The east 15 feet of Lot 12, all of Lot 13 and the west 5 feet of Lot 14, Block 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel AA: (Parcel No. 4715012220)

The east 20 feet of Lot 14 and all of Lot 15, Block 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel BB: (Parcel No. 4715012230)

Lots 16 and 17, Block 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel CC: (Parcel No. 4715012240)

Lots 18 and 19, Block 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel DD: (Parcel No. 4715012250)

Lots 20 and 21, Block 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at page 30, in Pierce County, Washington.

Parcel EE: (Parcel No. 4715012260)

Lots 22 and 23, Block 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel FF: (Parcel No. 4715012270)

Lot 24 and the west half of Lot 25, Block 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel GG: (Parcel No. 4715012280)

The east half of Lot 25 and all of Lot 26, Block 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel HH: (Parcel No. 4715012290)

Lots 27 and 28, Block 7946, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel II: (Parcel No. 4715012350)

Lots 1 and 2, Block 7950 The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel JJ: (Parcel No. 4715012360)

Lots 3 and 4, Block 7950, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel KK: (Parcel No. 4715012370)

Lots 5 and 6, Block 7950, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel LL: (Parcel No. 4715012380)

Lot 7, Block 7950, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel MM: (Parcel No. 4715012390)

Lots 8 and 9, Block 7950, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel NN: (Parcel No. 4715012400)

Lots 10 and 11, Block 7950, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel OO: (Parcel No. 4715012410)

Lots 12 and 13, Block 7950, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel PP: (Parcel No. 4715012420)

Lots 14 and 15, Block 7950, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel QQ: (Parcel No. 4715012430)

Lots 16 to 20, inclusive, Block 7950, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel RR: (Parcel No. 4715012440)

Lots 21 and 22, Block 7950, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel SS: (Parcel No. 4715012450)

Lots 23 to 28, inclusive, Block 7950, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel TT: (Parcel No. 4715012720)

Lot 2 and the west 20 feet of Lot 3, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel UU: (Parcel No. 4715012730)

The east 5 feet of Lot 3 and all of Lot 4, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel VV: (Parcel No. 4715012740)

Lots 5, 6 and 7, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel WW: (Parcel No. 4715012750)

Lots 8 and 9, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel XX: (Parcel No. 4715012760)

Lot 10 and the west half of Lot 11, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at page 30, in Pierce County, Washington.

Parcel YY: (Parcel No. 4715012770)

The east half of Lot 11 and all of Lot 12, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel ZZ: (Parcel No. 4715012780)

Lots 13 and 14, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel AAA: (Parcel No. 4715012790)

Lots 15 and 16, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel BBB: (Parcel No. 4715012800)

Lots 17 and 18, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel CCC: (Parcel No. 4715012810)

Lots 19 and 20, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel DDD: (Parcel No. 4715012820)

Lots 21 and 22, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel EEE: (Parcel No. 4715012830)

Lot 23, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel FFF: (Parcel No. 4715012840)

Lot 24 and the west half of Lot 25, Block 8045, The Indian Addition to the City of Tacoma, according to plan recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel GGG: (Parcel No. 4715012850)

The east half of Lot 25 and all of Lot 26, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel HHH: (Parcel No. 4715012860)

The north half of Lots 27 and 28, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel III: (Parcel No. 4715012870)

The south half of Lots 27 and 28, Block 8045, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel JJJ: (Parcel No. 4715013031)

The east half of Lot 3, all of Lot 4 and the west half of Lot 5, Block 8049, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel KKK: (Parcel No. 4715013032)

The east half of Lot 5, all of Lot 6 and the west half of Lot 7, Block 8049, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of

Plats at Page 30, in Pierce County, Washington.

Parcel LLL: (Parcel No. 4715013050)

The east half of Lot 7 and all of Lot 8, Block 8049, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel MMM: (Parcel No. 4715013060)

Lot 9 and the west half of Lot 10, Block 8049, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel NNN: (Parcel No. 4715013070)

The east half of Lot 10 and all of Lots 11, 12 and 13, Block 8049, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel OOO: (Parcel No. 4715013081)

Lots 14 and 15, Block 8049, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel PPP: (Parcel No. 4715013082)

Lots 16 and 17, Block 8049, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel QQQ: (Parcel No. 4715013090)

Lots 18 and 19, Block 8049, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel RRR: (Parcel No. 4715013100)

Lot 20, Block 8049, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel SSS: (Parcel No. 4715013111)

Lots 21 and 22, Block 8049, The Indian Addition to the City of Tacoma, according to plat recorded in Book 7 of Plats at Page 30, in Pierce County, Washington.

Parcel TTT: (Parcel No. 4715011530)

Lots 6, 7 and 8, Block 7846, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 at page 30, in Pierce County, Washington.

Parcel UUU: (Parcel No. 4715011540)

Lots 9 and 10, Block 7846, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 at page 30, in Pierce County, Washington.

Parcel VVV: (Parcel No. 4715011560)

Lots 14 and 15, Block 7846, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 at page 30, in Pierce County, Washington.

Except that portion conveyed to the State of Washington, acting by and through its Department of Transportation in Deed recorded under recording number 201107140534.

Parcel WWW: (Parcel No. 4715011570)

Lots 16 and 17, Block 7846, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 at page 30, in Pierce County, Washington.

Except that portion conveyed to the State of Washington, acting by and through its Department of Transportation in Deed recorded under recording number 201107140534.

Parcel XXX: (Parcel No. 4715011590)

Lots 20 to 23, inclusive, Block 7846, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 at page 30, in Pierce County, Washington.

Except that portion conveyed to the State of Washington in Deed recorded under recording number 201107070139.

Parcel YYY: (Parcel No. 4715012030)

Lots 2, 3 and 4, Block 7945, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 at page 30, in Pierce County, Washington.

Parcel ZZZ: (Parcel No. 4715012040)

Lots 5 through 8, inclusive, Block 7945, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 at page 30, in Pierce County, Washington.

Parcel AAAA: (Parcel No. 4715012090)

Lot 18 and the west half of Lot 19, Block 7945, The Indian Addition to the City of Tacoma, according to Plat recorded in Book 7 at page 30, in Pierce County, Washington.

Dated: December 13, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2016–30820 Filed 12–21–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI00000.L10200000.PH0000 LXSS024D0000 241A 4500102457]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The RAC will next meet in Idaho Falls, Idaho, January 24, 2016. The meeting will begin at 9:00 a.m. at the Idaho Falls BLM Office, 1405 Hollipark Drive, Idaho Falls, Idaho with elections of a new chairman, vice chairman and secretary. Members of the public are invited to attend. A comment period will be held January 24, following introductions from 9:00–9:30 a.m. Other meeting topics include, RAC candidate and recruitment opportunities, how administrative changes might impact the BLM, wilderness and travel management planning updates and the impacts the 2017 solar eclipse may have on public lands. All meetings are open to the public.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Sarah Wheeler, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone: (208) 524–7550. Email: *sawheeler@blm.gov.*

Dated: December 9, 2016.

Sarah Wheeler,

RAC Coordinator.

[FR Doc. 2016–30825 Filed 12–21–16; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM950000 L13400000.BX0000 17XL1109AF]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

FOR FURTHER CONTACT INFORMATION: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Carlos Martinez at 505–954–2096, or by email at *cjjmarti@blm.gov,* for assistance. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM)

The Supplemental plat, in Township 21 North, Range 10 East, of the New Mexico Principal Meridian, accepted December 14, 2016 for Group, 1185, NM.

The Indian Meridian, Oklahoma (OK)

The plat, representing the dependent resurvey and survey in Township 29 North, Range 23 East, of the Indian Meridian, accepted December 2, 2016, for Group 219 OK.

These plats are scheduled for official filing 30 days from the notice of publication in the **Federal Register,** as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication. If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of Protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Thomas A. Maestas,

Acting, Branch Chief, Cadastral Survey.

[FR Doc. 2016–30827 Filed 12–21–16; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–RTCA–22523; PPMPSPD1T.Y00000; PPSESERO10]

Wekiva River System Advisory Management Committee 2017 Meeting Schedule

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, (5 U.S.C. Appendix 1–16), of the 2017 meeting schedule for the Wekiva River System Advisory Management Committee.

DATES: The meetings are scheduled for: Wednesday, January 18, 2017; Wednesday, March 8, 2017; Tuesday, May 2, 2017; Wednesday, September 13, 2017; and Wednesday, November 8, 2017 (EASTERN). All meetings will begin at 2:00 p.m. and will end by 4:00 p.m.

ADDRESSES: All scheduled meetings will be held at the Wekiwa Springs State Park, 1800 Wekiwa Circle, Apopka, Florida 32712. Call (407) 884–2006 or visit online at *floridastateparks.org/wekiwasprings/* for additional information on this facility.

FOR FURTHER INFORMATION CONTACT: Jaime Doubek-Racine, Community Planner and Designated Federal Official, Rivers, Trails, and Conservation Assistance Program, Florida Field Office, Southeast Region, 5342 Clark Road, PMB #123, Sarasota, Florida 34233, or via telephone (941) 685–5912.

SUPPLEMENTARY INFORMATION: The Wekiva River System Advisory Management Committee was established by Public Law 106–299 to assist in the development of the comprehensive management plan for the Wekiva River System and provide advice to the Secretary of the Interior in carrying out her management responsibilities under the Wild and Scenic Rivers Act (16 U.S.C. 1274). Efforts have been made locally to ensure that the interested public is aware of the meeting dates.

The scheduled meetings will be open to the public. Each scheduled meeting will result in decisions and steps that advance the Wekiva River System Advisory Management Committee towards its objective of managing and implementing projects developed from the Comprehensive Management Plan for the Wekiva Wild and Scenic River.

Any member of the public may file with the Committee a written statement concerning any issues relating to the development of the Comprehensive Management Plan for the Wekiva Wild and Scenic River. Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The statement should be addressed to the Wekiva River System Advisory Management Committee, National Park Service, 5342 Clark Road, PMB #123, Sarasota, Florida 34233.

Alma Ripps

Chief, Office of Policy.

[FR Doc. 2016–30791 Filed 12–21–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKRO–ANIA–22524; PPAKAKROR4;PPMPRLE1Y.LS0000]

Notice of an Open Public Meeting for the Aniakchak National Monument Subsistence Resource Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: The National Park Service (NPS) is hereby giving notice the Aniakchak National Monument Subsistence Resource Commission (SRC) will hold a public meeting to develop and continue work on NPS subsistence program recommendations,

and other related regulatory proposals and resource management issues.

DATES: The Aniakchak National Monument SRC will meet from 1:30 p.m. to 4:30 p.m. or until business is completed on Monday, January 30, 2017.

ADDRESSES: Ray's Place, 2200 James Street, Port Heiden, AK, 99549.

FOR FURTHER INFORMATION CONTACT: Teleconference participants must call the NPS office in King Salmon, AK at (907) 246–2154 or (907) 246–3305, by Monday, January 23, 2017, prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership contact Mark Sturm, Designated Federal Official and Superintendent, at (907) 246–2154, or via email at *mark_sturm@nps.gov* or Linda Chisholm, Subsistence Coordinator, at (907) 246–2154 or via email at *linda_chisholm@nps.gov* or Clarence Summers, Subsistence Manager, at (907) 644–3603 or via email at *clarence_summers@nps.gov.*

SUPPLEMENTARY INFORMATION: The NPS is holding the meeting pursuant to the Federal Advisory Committee Act (16 U.S.C. Appendix 1–16). The NPS SRC program is authorized under Section 808 of the Alaska National Interest Lands Conservation Act, (16 U.S.C. 3118), title VIII. SRC meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. SRC meetings will be recorded and meeting minutes will be available upon request from the Superintendent for public inspection approximately three weeks after the meeting. Before including your address, telephone 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Proposed Meeting Agenda: The agenda may change to accommodate SRC business. The proposed meeting agenda includes the following:

1. Call to Order—Confirm Quorum
2. Welcome and Introduction
3. Review and Adoption of Agenda
4. Approval of Minutes
5. Superintendent's Welcome and Review of the SRC Purpose
6. SRC Membership Status
7. SRC Chair and Members' Reports
8. Superintendent's Report
9. Old Business
10. New Business
11. Federal Subsistence Board Update
12. Alaska Boards of Fish and Game Update
13. National Park Service Reports
    a. Ranger Update
    b. Resource Manager's Report
    c. Subsistence Manager's Report
14. Public and Other Agency Comments
15. Work Session
16. Set Tentative Date and Location for Next SRC Meeting
17. Adjourn Meeting

If this meeting is postponed due to inclement weather, or lack of a quorum, the alternate meeting dates are Tuesday, January 31, 2017, or Wednesday, February 1, 2017, or Thursday, February 2, 2017, from 1:30 p.m. to 4:30 p.m. The alternate meeting location is Ray's Place in Port Heiden, AK. SRC meeting locations and dates may change based on inclement weather or exceptional circumstances. If the meeting dates and locations are changed, the Superintendent will issue a press release and use local newspapers and radio stations to announce the rescheduled meeting.

Alma Ripps

Chief, Office of Policy.

[FR Doc. 2016–30792 Filed 12–21–16; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Magnetic Tape Cartridges and Components Thereof, DN 3188* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to 19 CFR 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Sony Corporation; Sony Storage Media and Devices Corporation; Sony DADC US Inc.; and Sony Latin America Inc. on December 15, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain magnetic tape cartridges and components thereof. The complaint names as respondents Fujifilm Holdings Corporation of Japan; Fujifilm Corporation of Japan; Fujifilm Holdings America Corporation of Valhalla, NY; and Fujifilm Recording Media U.S.A., Inc. of Bedford, MA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the

United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3188'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 16, 2016

Lisa R. Barton.

Secretary to the Commission.

[FR Doc. 2016–30788 Filed 12–21–16; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Graphics Processors, DDR Memory Controllers, and Products Containing the Same, DN 3189* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under § 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of ZiiLabs Inc., Ltd. on December 16, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain graphics processors, DDR memory controllers, and products containing the same. The complaint names as respondents Advance Micro Devices, Inc. of Sunnyvale, CA; Lenovo Group Ltd. of China; Lenovo Holding Co., Inc. of Morrisville, NC; Lenovo (United States) Inc. of Morrisville, NC; LG Electronics, Inc. of Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, NJ; LG Electronics MobileComm U.S.A., Inc. of San Diego, CA; MediaTek, Inc. of Taiwan; MediaTek USA Inc. of San Jose, CA; Motorola Mobility LLC of Libertyville, IL; Qualcomm Inc. of San Diego, CA; Sony Corporation of Japan; Sony Corporation of America of New York, NY; Sony Electronics Inc. of San Diego, CA; Sony Mobile Communications (USA) Inc. of San Mateo, CA; Sony Computer Entertainment Inc. of Japan; and Sony Interactive Entertainment LLC of San Mateo, CA. The complainant

requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3189'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 19, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–30856 Filed 12–21–16; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–951]

Certain Lithium Metal Oxide Cathode Materials, Lithium-Ion Batteries for Power Tool Products Containing Same, and Power Tool Products With Lithium-Ion Batteries Containing Same Commission's Final Determination; Issuance of a Limited Exclusion Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has issued a limited exclusion order prohibiting importation of infringing lithium metal oxide cathode materials for consumption in the United States.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 30, 2015, based on a complaint filed by BASF Corporation of Florham Park, New Jersey and UChicago Argonne LLC of Lemont, Illinois (collectively, ''Complainants''). 80 *FR* 16696 (Mar. 30, 2015). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lithium metal oxide cathode materials, lithium-ion batteries for power tool products containing same, and power tool products with lithium-ion batteries

containing same by reason of infringement of one or more of claims 1–4, 7, 13, and 14 of U.S. Patent No. 6,677,082 (''the '082 patent'') and claims 1–4, 8, 9, and 17 of U.S. Patent No. 6,680,143 (''the '143 patent''). *Id.* The notice of investigation named the following respondents: Umicore N.V. of Brussels, Belgium; Umicore USA Inc. of Raleigh, North Carolina (collectively, ''Umicore''); Makita Corporation of Anjo, Japan; Makita Corporation of America of Buford, Georgia; and Makita U.S.A. Inc. of La Mirada, California (collectively, ''Makita''). *Id.* The Office of Unfair Import Investigations is a party to the investigation.

On November 5, 2015, the ALJ granted a joint motion by Complainants and Makita to terminate the investigation as to Makita based upon settlement. *See* Order No. 32 (Nov. 5, 2015). The Commission determined not to review. *See* Notice (Nov. 23, 2015).

On December 1, 2015, the ALJ granted an unopposed motion by Complainants to terminate the investigation as to claim 8 of the '082 patent. *See* Order No. 35 (Dec. 1, 2015). The Commission determined not to review Order No. 35. *See* Notice (Dec. 22, 2015).

On February 29, 2016, the ALJ issued his final ID, finding a violation of section 337 by Umicore in connection with claims 1–4, 7, 13, and 14 of the '082 patent and claims 1–4, 8, 9, and 17 of the '143 patent. Specifically, the ID found that the Commission has subject matter jurisdiction, *in rem* jurisdiction over the accused products, and *in personam* jurisdiction over Umicore. ID at 10–11. The ID found that Complainants satisfied the importation requirement of section 337 (19 U.S.C. 1337(a)(1)(B)). *Id.* at 9–10. The ID found that the accused products directly infringe asserted claims 1–4, 7, 13, and 14 of the '082 patent; and asserted claims 1–4, 8, 9, and 17 of the '143 patent, and that Umicore contributorily infringes those claims. *See* ID at 65–71, 83–85. The ID, however, found that Complainants failed to show that Umicore induces infringement of the asserted claims. *Id.* at 79–83. The ID further found that Umicore failed to establish that the asserted claims of the '082 or '143 patents are invalid for lack of enablement or incorrect inventorship. ID at 118–20. The ID also found that Umicore's laches defense fails as a matter of law (ID at 122–124) and also fails on the merits (ID at 124–126). Finally, the ID found that Complainants established the existence of a domestic industry that practices the asserted patents under 19 U.S.C. 1337(a)(2). *See* ID at 18, 24.

On March 14, 2016, Umicore filed a petition for review of the ID and a motion for a Commission hearing. Also on March 14, 2016, the Commission investigative attorney (''IA'') petitioned for review of the ID's finding that a laches defense fails as a matter of law in section 337 investigations. Further on March 14, 2016, Complainants filed a contingent petition for review of the ID. On March 22, 2016, the parties filed responses to the petitions for review.

On April 8, 2016, 3M Corporation (''3M'') filed a motion to intervene under Commission Rule 210.19. 3M requested that the Commission grant it ''with full participation rights in this Investigation in order to protect its significant interests in the accused materials.''

On May 11, 2016, the Commission determined to review the final ID in part. 81 *FR* 30548–50 (May 17, 2016). Specifically, the Commission determined to review (1) the ID's contributory and induced infringement findings; (2) the ID's domestic industry findings under 19 U.S.C. 1337(a)(3)(C); and (3) the ID's findings on laches. The Commission determined to deny 3M's motion to intervene, but stated that it would consider 3M's comments in considering remedy, bonding and the public interest this investigation if a violation of Section 337 is found. Pursuant to Commission rule 210.45 (19 CFR 210.45), Umicore's request for a Commission hearing was granted.

The Commission requested the parties to brief their positions on the issues under review with reference to the applicable law and the evidentiary record, and posed specific briefing questions. On May 23, 2016, the parties filed submissions to the Commission's questions. On June 3, 2016, the parties filed responses to the initial submissions. Interested public entities, including 3M and the Belgian Ambassador also submitted comments on the public interest.

On August 2, 2016, Complainants filed a motion pursuant to 19 CFR 210.15(a)(2) and 19 CFR 210.38(a) for the Commission to reopen the record in this Investigation to admit a July 6, 2016 news article that allegedly includes statements by Umicore Greater China Senior Vice President Chuxian Feng as to this investigation. On August 11 & 12, 2016, Umicore and the IA filed respective oppositions to the motion. The Commission has determined to deny Complainants motion to reopen the record.

The Commission was interested in hearing presentations concerning the appropriate remedy (if any) and the effect that such remedy would have upon the public interest. The Commission invited Government agencies, public-interest groups, and interested members of the public to make oral presentations on the issues of remedy and the public interest. The Commission held a public hearing on Thursday, November 17, 2016, in the USITC Main Hearing Room. The hearing was limited to the issues of laches, contributory infringement, and the public interest. The hearing consisted of two panels. The first panel was limited to the parties (*i.e.,* complainants, respondents, and the IA), who were given an opportunity to comment on the issues identified above. The second panel consisted of non-party witnesses on the public interest.

The Commission thanks the various entities who appeared to testify on the public interest.

Having examined the record of this investigation, including the final ID, the petitions for review, responses thereto, and all other appropriate submissions, the Commission has determined to reverse the ALJ's finding that Umicore does not induce infringement. The Commission finds that the record evidence fails to support the ALJ's finding that Umicore had a good faith belief of non-infringement. The Commission has determined to affirm the ALJ's finding that Umicore's laches defense fails on the merits. The Commission vacates and takes no position on the legal question of whether laches is an available defense at the Commission. The Commission has determined to vacate and take no position on the ALJ's finding that Complainants established the existence of a domestic industry under 19 U.S.C. 1337(a)(3)(C) with respect to BASF.

Having found a violation of section 337 in this investigation, the Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of lithium metal oxide cathode materials that infringe one or more of claims 1–4, 7, 13, and 14 of the '082 patent, or claims 1–4, 8, 9, and 17 of the '143 patent that are manufactured by, or on behalf of, or imported by or on behalf of Umicore N.V. and Umicore USA Inc. or any of their affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns.

The Commission has also determined that the public interest factors enumerated in section 337(d) (19 U.S.C. 1337(d)) does not preclude issuance of the limited exclusion order. Finally, the Commission has determined that a bond in the amount of three percent of entered value is required to permit

temporary importation during the period of Presidential review (19 U.S.C. 1337(j)) of lithium metal oxide cathode materials that are subject to the limited exclusion order. The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 16, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–30811 Filed 12–21–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–043]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 30, 2016 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–565 and 731–TA–1341 (Preliminary) (Hardwood Plywood from China). The Commission is currently scheduled to complete and file its determinations on January 3, 2017; views of the Commission are currently scheduled to be completed and filed on January 10, 2017.
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 19, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–31021 Filed 12–20–16; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0009

The Standard on Presence Sensing Device Initiation (PSDI) (Extension of the Office of Management and Budget's (OMB) Approval of Collections of Information (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on Presence Sensing Device Initiation (29 CFR 1910.217(h)).

DATES: Comments must be submitted (postmarked, sent, or received) by February 21, 2017.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0009 Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2010–0009) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraph 1910.217(h) regulates the use of presence sensing devices (''PSDs'') used to initiate the operation of mechanical power presses; a PSD (*e.g.,* a photoelectric field or curtain) automatically stops the stroke of a mechanical power press when the device detects an operator entering a danger zone near the press. A

mechanical power press using presence sensing device initiation (PSDI) automatically starts (initiates) the stroke when the device detects no operator within the danger zone near the press. The certification/validation of safety systems for PSDI shall consider the press, controls, safeguards, operator, and environment as an integrated system which shall comply with 29 CFR 1910.217(a) through (h). Accordingly, the Standard protects employees from serious crush injuries, amputations, and death.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency reports no program changes or adjustments; it is retaining its previous estimate of one hour.

The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Standard.

Type of Review: Extension of a currently approved collection.

Title: Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217 (h)).

OMB Control Number: 1218–0143.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 10.

Frequency of Response: Initially, annually; On occasion.

Total Responses: 10.

Average Time per Responses: 0.

Estimated Total Burden Hours: 1.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA–2010–0009. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as their social security number and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on December 16, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–30845 Filed 12–21–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0042]

Gear Certification Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Gear Certification Standard (29 CFR part 1919).

DATES: Comments must be submitted (postmarked, sent, or received) by February 21, 2017.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0042, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3653, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2010–0042) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.*

For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The ICR addresses the burden hours associated with gathering information to complete the OSHA 70 Form. The OSHA 70 Form is used by applicants seeking accreditation from OSHA to be able to test or examine certain equipment and material handling devices as required under the maritime regulations, part 1917 (Marine Terminals), and part 1918 (Longshoring). The OSHA 70 Form application for accreditation provides an easy means for companies to apply for accreditation.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

There are no program changes or adjustments associated with this Information Collection request. The Agency is requesting that it retain its current burden hour estimate of 184 hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Gear Certification Standard (29 CFR part 1919); OSHA 70 Form.

OMB Control Number: 1218–0003.

Affected Public: Business or other for-profits.

Number of Respondents: 45.

Frequency of Responses: On occasion; Monthly.

Total Responses: 6,357.

Average Time per Response: Varies from 1 minute (.02 hour) for an employer to disclose the OSHA 70 Form to an OSHA Compliance Officer during an inspection to 45 minutes (.75 hour) for a prospective accredited agency to complete the form.

Estimated Total Burden Hours: 184.

Estimated Cost (Operation and Maintenance): $2,878,090.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0042). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on December 16, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–30844 Filed 12–21–16; 8:45 am]

BILLING CODE 4510–26–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 16–08]

Report on the Selection of Eligible Countries for Fiscal Year 2017

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUPPLEMENTARY INFORMATION: This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003, Pub. L. 108–199, Division D, (the ''Act''), 22 U.S.C. 7708(d)(1).

Dated: December 16, 2016.

Sarah E. Fandell,

VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

Report on the Selection of Eligible Countries for Fiscal Year 2017

Summary

This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003, as amended, Pub. L. 108–199, Division D, (the ''Act'') (22 U.S.C. 7707(d)(1)).

The Act authorizes the provision of assistance under section 605 of the Act (22 U.S.C. 7704) to countries that enter into compacts with the United States to support policies and programs that advance the progress of such countries in achieving lasting economic growth and poverty reduction, and are in furtherance of the Act. The Act requires the Millennium Challenge Corporation (''MCC'') to determine the countries that will be eligible to receive assistance for the fiscal year, based on their demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, as well as on the opportunity to reduce poverty and generate economic growth in the country. The Act also requires the submission of reports to appropriate congressional committees and the publication of notices in the **Federal Register** that identify, among other things:

1. The countries that are ''candidate countries'' for assistance for fiscal year (''FY'') 2017 based on their per-capita income levels and their eligibility to receive assistance under U.S. law, and countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act (22 U.S.C. 7707(a)));

2. The criteria and methodology that the Board of Directors of MCC (the ''Board'') will use to measure and evaluate the policy performance of the ''candidate countries'' consistent with the requirements of section 607 of the Act in order to select ''eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act (22 U.S.C. 7707(b))); and

3. The list of countries determined by the Board to be ''eligible countries'' for FY 2017, with justification for eligibility determination and selection for compact negotiation, including with which of the eligible countries the Board will seek to enter into compacts (section 608(d) of the Act (22 U.S.C. 7707(d))).

This is the third of the above-described reports by MCC for FY 2017. It identifies countries determined by the Board to be eligible under section 607 of the Act (22 U.S.C. 7706) for FY 2017 with which the MCC will seek to enter into compacts under section 609 of the Act (22 U.S.C. 7708), as well as the justification for such decisions. The report also identifies countries selected by the Board to receive assistance under MCC's threshold program pursuant to section 616 of the Act (22 U.S.C. 7715).

Eligible Countries

The Board met on December 13, 2016 to select those eligible countries with which the United States, through MCC, will seek to enter into a Millennium Challenge Compact pursuant to section 607 of the Act (22 U.S.C. 7706) for FY 2017. The Board selected the following eligible countries for such assistance for FY 2017: Burkina Faso, Sri Lanka, and Tunisia. The Board also reselected the following countries for compact assistance for FY 2017: Cote d'Ivoire, Mongolia, Nepal, and Senegal.

Criteria

In accordance with the Act and with the ''Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2017'' formally submitted to Congress on September 20, 2016, selection was based primarily on a country's overall performance in three broad policy categories: Ruling Justly, Encouraging Economic Freedom, and Investing in People. The Board relied, to the maximum extent possible, upon transparent and independent indicators to assess countries' policy performance and demonstrated commitment in these three broad policy areas. The Board compared countries' performance on the indicators relative to their income-level peers, evaluating them in comparison to either the group of low income countries (''LIC'') or the group of lower middle income countries (''LMIC'').

The criteria and methodology used to assess countries on the annual scorecards are outlined in the ''Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2017.'' [1] Scorecards reflecting each country's performance on the indicators are available on MCC's Web site at *www.mcc.gov/scorecards*.

The Board also considered whether any adjustments should be made for data gaps, data lags, or recent events since the indicators were published, as well as strengths or weaknesses in particular indicators. Where appropriate, the Board took into account additional quantitative and qualitative information, such as evidence of a country's commitment to fighting corruption, investments in human development outcomes, or poverty rates. For example, for additional information in the area of corruption, the Board considered how a country is evaluated by supplemental sources like Transparency International's Corruption Perceptions Index, the Global Integrity Report, Open Government Partnership status, and the Extractive Industry Transparency Initiative, among others, as well as on the defined indicator. The Board also took into account the margin of error around an indicator, when applicable. In keeping with legislative directives, the Board also considered the opportunity to reduce poverty and promote economic growth in a country, in light of the overall information available, as well as the availability of appropriated funds.

This was the eighth year the Board considered the eligibility of countries for subsequent compacts, as permitted under section 609(k) of the Act (22 U.S.C. 7708(k)). As in previous years, they considered the higher bar expected of subsequent compact countries, including examining the implementation of the first compact, and evidence of both improved scorecard policy performance and a commitment to reform. The Board also considered the eligibility of countries for initial compacts. The Board sees the selection decision as an annual opportunity to determine where MCC funds can be most effectively invested

[1] Available at *https://www.mcc.gov/resources/doc/report-selection-criteria-and-methodology-fy17*.

to support poverty reduction through economic growth in relatively well-governed, poor countries. The Board carefully considers the appropriate nature of each country partnership—on a case-by-case basis—based on factors related to economic growth and poverty reduction, the sustainability of MCC's investments, and the country's ability to attract and leverage public and private resources in support of development. In addition, this is the first year where the Board considered an explicit higher bar for those countries close to the upper end of the candidate pool, looking closely in such cases at a country's access to development financing, the nature of poverty in the country, and its policy performance.

As with previous years, a number of countries that performed well on the quantitative elements of the eligibility criteria (*i.e.,* on the policy indicators) were not chosen as eligible countries for FY 2017. FY 2017 was a particularly competitive year: Several countries were already working to develop compacts, multiple countries passed the scorecard (some for the first time), and funding was limited due to budget constraints. As a result, only three countries that passed the scorecard and met the higher bars described above were newly selected for MCC compacts, and only two countries for the threshold program.

MCC's engagement with partner countries is not open-ended, and the Board is very deliberate when determining eligibility for follow-on partnerships. In determining subsequent compact eligibility, the Board considered—in addition to the criteria outlined above—the country's performance implementing its first compact, including the nature of the country's partnership with MCC, the degree to which the country has demonstrated a commitment and capacity to achieve program results, and the degree to which the country has implemented the compact in accordance with MCC's core policies and standards. To the greatest extent possible, this was assessed using pre-existing monitoring and evaluation targets and regular quarterly reporting. This information was supplemented with direct surveys and consultation with MCC staff responsible for compact implementation, monitoring, and evaluation. MCC published a Guide to the Supplemental Information Sheet [2] and a Guide to the Compact Survey Summary [3] in order to increase transparency about the type of supplemental information the Board uses to assess a country's policy performance and compact implementation performance. The Board also considered a country's commitment to further sector reform, as well as evidence of improved scorecard policy performance.

Countries Newly Selected for Compact Assistance

Using the criteria described above, Burkina Faso, Sri Lanka, and Tunisia are the only candidate countries under section 606(a) of the Act (22 U.S.C. 7705(a)) that were newly selected for assistance under section 607 of the Act (22 U.S.C. 7706).

Burkina Faso: With an ambitious reform agenda focused on poverty reduction, a clearly improved scorecard, and the completion of its first compact in July 2014, Burkina Faso exemplifies the higher bar MCC has for second compact countries. Its continued policy improvement is clear: Despite being one of the poorest countries in Africa, the country passes 13 of 20 indicators, has shown strong improvement on democratic rights, and has a consistently strong score on the Control of Corruption indicator. In addition, the country has taken important steps to ensure the sustainability of the first compact investments.

Sri Lanka: On the back of a successful election in 2015, Sri Lanka now passes the MCC scorecard with 13 of 20 indicators met, including the hard hurdles on both democratic rights and Control of Corruption. In addition MCC has found Sri Lanka to be a high-capacity and committed partner during development of the threshold program over the past year. As a result, MCC feels Sri Lanka is now solidly exemplifying the profile of compact partner, and has decided to move Sri Lanka from the threshold program into the compact program. Work done to date in developing the threshold program will now contribute to the compact development process.

Tunisia: Tunisia meets the higher bar expected of candidate countries that sit towards the upper end of the Lower Middle Income Country pool (LMIC). It passes MCC's scorecard with 13 of 20 indicators met, including very strong performance on democratic rights, as well as Control of Corruption. The country also continues to confront major development challenges, with significant inequality, large pockets of poverty, and vulnerability undermining the recent strong democratic gains. Together with a significant policy reform agenda, a compact with Tunisia would provide MCC with a unique opportunity to partner with a high-capacity partner in a critically important region.

Countries Reselected To Continue Compact Development

Three of the countries selected for compact assistance for FY 2017 were previously selected for FY 2016. These countries are Cote d'Ivoire, Nepal and Senegal. The Board reselected these countries based on their continued or improved policy performance since their prior selection. Mongolia, which had originally been selected for compact assistance for FY 2015, temporarily left the candidate pool in FY 2016 when it graduated to UMIC status. It has returned to the candidate pool as a LMIC in FY 2017, and so the Board has once again selected the country for compact assistance for FY 2017.

Countries Selected To Receive Threshold Program Assistance

The Board selected Kosovo and Timor-Leste to receive threshold program assistance.

Kosovo: Kosovo is committed to reform and is a strong partner of MCC—taking numerous steps to improve its scorecard performance since 2012, and ultimately being selected for compact assistance for FY 2016. However, given Kosovo's trajectory on the Control of Corruption indicator, the Board decided that threshold program assistance is a more appropriate tool. By selecting Kosovo to receive threshold program assistance, MCC will support the government in its efforts on continued institutional and policy reform.

Timor-Leste: Timor-Leste offers MCC the opportunity to support the government with its significant policy and institutional reform needs as it confronts substantial poverty and capacity challenges, especially in the face of a difficult macroeconomic environment. While it has historically struggled to pass the MCC scorecard as an LMIC, Timor-Leste has fallen into the LIC category, where it does pass MCC's scorecard with 12 out of 20 indicators met, including both democratic rights indicators and the Control of Corruption indicator.

Countries Reselected To Continue Developing Threshold Programs

This year the Board reselected Togo to continue developing a threshold program. Togo continues to improve on MCC's scorecard, passing more than half of the scorecard overall by meeting 12 of 20 indicators this year. It also continues to meet the democratic rights

[2] Available at *https://www.mcc.gov/resources/doc/guide-to-supplemental-information-fy17.*

[3] Available at *https://www.mcc.gov/resources/doc/guide-to-the-compact-survey-summary-fy15.*

hurdle and passed the Control of Corruption indicator for the first time.

Ongoing Review of Partner Countries' Policy Performance

The Board emphasized the need for all partner countries to maintain or improve their policy performance. If it is determined during compact implementation that a country has demonstrated a significant policy reversal, MCC can hold it accountable by applying MCC's Suspension and Termination Policy.[4]

[FR Doc. 2016–30805 Filed 12–21–16; 8:45 am]

BILLING CODE 9211–03–P

[4] Available at *https://www.mcc.gov/resources/doc/policy-on-suspension-and-termination.*

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection System

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection.

DATES: Written comments on this notice must be received by February 21, 2017, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

ADDRESSES: Send comments to Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; or via email to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Please submit one copy of your comments by only one method. All submissions received must include the agency name and collection name identified above for this information collection. Commenters are strongly encouraged to transmit their comments electronically via email. Comments, including any personal information provided, become a matter of public record. They will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

Title of Collection: Innovation Corps (I-Corps) Teams Program Survey of Program Participants and NSF Principal Investigators.

OMB Number: 3145–NEW.

Type of request: Intent to seek approval to establish an information collection.

Abstract: In fiscal year 2011, NSF created the Innovation Corps (I-Corps) Teams Program to build a national innovation ecosystem by accelerating innovation among identified NSF-funded researchers. The I-Corps Teams Program provides training, mentoring, and a small grant to help project teams determine the readiness of their technology products for transition to commercialization. By design, I-Corps Teams are composed of one principal investigator (PI), an entrepreneurial lead (EL), and a local mentor. NSF's I-Corps Teams program model has been replicated in other Federal agencies that sponsor research, including the National Institutes of Health (NIH). NSF and NIH have a memorandum of understanding to cooperate in the implementation and monitoring of I-Corps at NIH.

As part of I-Corps, teams receive entrepreneurial training and ongoing support for the 6-month duration of the grant. The I-Corps support facilitates each team's entrepreneurial efforts. The grant requires I-Corps awardees to participate in an intensive immersion training on entrepreneurship (a 3-day opening workshop, 5 weeks of activities with online classes, and a 2-day final workshop). The training follows a structured approach to give team members hands-on experience in transferring knowledge into commercial products. NSF tracks I-Corps Teams' progress, as they are expected to hit milestones for the duration of the training and throughout the 6-month grant period. Additionally, NSF monitors I-Corps Teams' project outcomes after the grant period, with longitudinal surveys conducted with I-Corps Teams at two future intervals, time 1, at least one year after the end of the training, and time 2, at least one year after time 1. To date, only time 1 longitudinal surveys have been conducted.

This notice supports NSF's efforts to monitor and evaluate the I-Corps Teams program at NSF and NIH. It is a follow up to a previously approved data collection request related to I-Corps. NSF previously received clearance for two longitudinal surveys of I-Corps team members after the completion of the program to continuously track entrepreneurial outcomes [**Federal Register** Vol. 80 No. 25, February 06, 2015 pages 6773–6774, OMB clearance number 3145–0238, expiration date: April 30, 2018]. NSF is seeking to modify the survey instrument approved for the second longitudinal survey, administered at time 2.

Additionally, NSF is also reaffirming its intent to conduct a survey of NSF PIs who did not participate in I-Corps. This intent was previously published in a **Federal Register** notice on December 04, 2015 [Volume 80, number 233 pages 75881–75882]. This survey of additional PIs supports a rigorous longitudinal outcome/impact evaluation of the I-Corps Team Program using a quasi-experimental design to understand I-Corps impact on teams that go through the program and its impact on team members and academic culture.

This information collection request relates to: (1) A revision to previously cleared survey instrument for I-Corps team participants; (2) a similar survey instrument for PIs in comparable non-I-Corps NSF projects; and (3) a proposed instrument for in-depth interviews with 10 I-Corps and 10 comparable non-I-Corps teams (including institutional support personnel). The survey instrument for the non-I-Corps PIs is modeled after the content of the I-Corps longitudinal time 2 instrument to enable a direct comparison of outputs and outcomes. For the most part, it replaces specific references to I-Corps training and the I-Corps project that was the focus of commercial exploration with references to any other training and NSF project that was the focus of commercial exploration.

The survey of non-I-Corps PIs will begin with an initial screening module to identify those who have received

support for projects with commercial potential and who have desire to act on that potential but have not received an I-Corps grant. PIs with non-I-Corps NSF-funded projects awarded between 2009 and 2013 will be surveyed. PIs who reported active interest in commercial potential for their research projects will be asked to complete an additional module adapted from the I-Corps Longitudinal Data Collection already approved by OMB for I-Corps team members. PIs not interested in the commercial potential of their research will stop the survey after completing the screening module. The surveys will be administered online.

In addition to the comparison between the I-Corps teams and a comparable group based on survey results, the study also includes in-depth interviews to gain an understanding of the influence of participation in the I-Corps program on PIs (and/or other active team members) as well as to compare the impact of the I-Corps program on industry collaborations and other networking activities. Half of all in-depth interviews will be conducted over the phone while the other half will take place during site visits to the home institutions of the teams selected for the study.

Affected Public: NSF and NIH I-Corps grantees, including PIs, Entrepreneurial Leads and Mentors (or individuals taking equivalent formal roles in the teams) and non-I-Corps Grant recipients of NSF Programs.

Total Respondents: 6,222 (survey of NSF/NIH I-Corps grantee team members and non-I-Corps NSF PIs) and 160 (in-depth interviews with I-Corps and non-I-Corps PIs, their teams and support personnel).

Frequency: One-time collection.

Total responses: 5,422 (non-I-Corps screener questions only), 1,342 (longitudinal survey instrument for I-Corps teams and non-I-Corps NSF PIs), and 160 (in-depth interviews).

Average Time per response: 3 minutes (screener questions), 15 minutes (longitudinal survey instrument), and 60 minutes (in-depth interview).

Estimated Total Burden Hours: 817 hours.

Authority: Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*).

Dated: December 16, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–30804 Filed 12–21–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341; NRC–2014–0109]

DTE Electric Company; Fermi Nuclear Power Plant, Unit 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued a renewal of Facility Operating License No. NPF–43, held by DTE Electric Company (DTE or the licensee), for the continued operation of Fermi Nuclear Power Plant, Unit 2 (Fermi 2). The renewed facility operating license No. NPF–43 authorizes operation of Fermi 2 at reactor core power level not in excess of 3,486 megawatts thermal (approximately 1170 megawatts electric), in accordance with the provisions of the renewed license and technical specifications. In addition, the NRC has prepared a record of decision (ROD) that supports the decision to renew facility operating license No. NPF–43.

DATES: The renewed operating license No. NPF–43 is effective on December 15, 2016.

ADDRESSES: Please refer to Docket ID NRC–2014–0109 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–2014–0109. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *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: Lois James, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3306; email: *Lois.James@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has issued renewed Facility Operating License No. NPF–43, held by the licensee, which authorizes continued operation of Fermi 2 at reactor core power levels not in excess of 3,486 megawatts thermal, in accordance with the provisions of the renewed license and technical specifications. The ROD that supports the decision to renew Facility Operating License No. NPF–43 is available in ADAMS under Accession No. ML16270A567.

As discussed in the ROD and the final supplemental environmental impact statement (FSEIS) for Fermi 2 Nuclear Power Plant, Supplement 56 to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Fermi 2 Nuclear Power Plant,'' dated September 2016 (ADAMS Accession No. ML16259A103 for Volume 1 and ML16259A109 for Volume 2), the NRC considered a range of reasonable alternatives that included natural gas combined-cycle (NGCC); coal-integrated gasification combined-cycle; new nuclear power; and a combination of NGCC, wind, and solar power. The ROD and FSEIS document the NRC's determination that the adverse environmental impacts of license renewal for Fermi 2 are not so great that preserving the option of license renewal for energy planning decision makers would be unreasonable.

Fermi 2 is a single-unit, boiling water reactor and is located in Frenchtown Township, Michigan. The application for the renewed license, ''Fermi 2 License Renewal Application,'' dated April 24, 2014 (ADAMS Package Accession No. ML14121A554), as supplemented by letters dated through July 6, 2016, complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. As required by the Act and the NRC's regulations in chapter I of title 10 of the *Code of Federal Regulations,* the NRC has made appropriate findings, which are set forth in the license. A public notice of the proposed issuance of the renewed license and an opportunity for

a hearing was published in the **Federal Register** on June 18, 2014 (79 FR 34787).

For further details with respect to this action, see: (1) DTE Electric Company license renewal application for Fermi 2, dated April 24, 2014, as supplemented by letters dated through July 6, 2016; (2) the NRC's safety evaluation report dated July 2016 (ADAMS Accession No. ML16190A241); (3) the NRC's final environmental impact statement (NUREG–1437, Supplement 56), for Fermi 2, published in September 2016 (ADAMS Accession No. ML16259A103 for Volume 1 and ML16259A109 for Volume 2); and (4) the NRC's ROD (ADAMS Accession No. ML16270A567).

Dated at Rockville, Maryland, this 15 day of December, 2016.

For the U.S. Nuclear Regulatory Commission,

Benjamin G. Beasley,

Acting Deputy Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–30862 Filed 12–21–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–166; NRC–2010–0250]

University of Maryland; Maryland University Training Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering renewal of Facility Operating License No. R–70, held by the University of Maryland (UMD or the licensee) for the operation of the Maryland University Training Reactor (MUTR) for an additional 20 years. The NRC is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the proposed renewal of the license.

DATES: The EA and FONSI referenced in this document is available on December 22, 2016.

ADDRESSES: Please refer to Docket ID NRC–2010–0250 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–2010–0250. 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.
- *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.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *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: Eben S. Allen, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4246; email: *Eben.Allen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering renewal of Facility License No. R–70, held by the UMD, which would authorize continued operation of the MUTR, located in College Park, Prince George's County, Maryland. Therefore, as required by section 51.21 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Criteria for and identification of licensing and regulatory actions requiring environmental assessments,'' the NRC performed an EA. Based on the results of the EA that follows, the NRC has determined not to prepare an environmental impact statement for the renewed license and is issuing a FONSI. The renewed license will be issued following the publication of this notice.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would renew Facility License No. R–70 for a period of 20 years from the date of issuance of the renewed license. The proposed action is in accordance with the licensee's application dated May 12, 2000, as supplemented by letters dated June 7, August 4, September 17, and October 7, 2004; April 18, 2005; April 25, (two letters), August 28 (two letters), September 7, November 9, and December 18, 2006; May 27, July 28, and September 22, 2010; January 31, February 2, May 2, July 5, July 29, September 26, September 28, and October 12, 2011; February 9, March 14, May 22, and August 29, 2012; March 21, 2013; April 10, June 18, and November 25 (two letters), 2014; December 2, 2015; and January 5, February 18, February 29, and November 17, 2016. In accordance with 10 CFR 2.109, ''Effect of timely renewal application,'' the existing license remains in effect until the NRC takes final action on the renewal application.

Need for the Proposed Action

The proposed action is needed to allow the continued operation of the MUTR to routinely provide teaching, research, and services to numerous institutions for a period of 20 years.

Environmental Impacts of the Proposed Action

The NRC is preparing its safety evaluation (SE) of the proposed action to issue a renewed Facility Operating License No. R–70 to allow continued operation of the MUTR for a period of 20 years and concludes there is reasonable assurance that the MUTR will continue to operate safely for the additional period of time. The details of the NRC staff's SE will be provided with the renewed license that will be issued as part of the letter to the licensee approving its license renewal application. This document contains the EA of the proposed action.

The MUTR is located on the northeastern quadrant of UMD campus in a dedicated building connected to the Chemical and Nuclear Engineering Building. The reactor is housed in a building constructed primarily of concrete, brick, and steel which serves as a confinement. The reactor site comprises the reactor building and a small area immediately surrounding it. Adjacent to the reactor site are three buildings: The J.M. Patterson Building; the Asphalt Institute, and the Animal and Avian Sciences building. The nearest permanent residences are located approximately 370 meters (1,200 feet) from the site boundary. The nearest dormitories are located approximately 230 meters (750 feet) from the reactor.

The MUTR is a light water open pool type reactor licensed for a maximum 250 kilowatt (thermal) steady state power using low-enriched uranium (less than 20 percent) TRIGA (Training, Research, Isotope Production, General Atomics) fuel. The reactor is not licensed to operate in a pulse mode. The

fuel is located at the bottom of an aluminum tank with a volume of approximately 22,700 liters (6,000 gallons) and a depth of 6.5 meters (21.25 feet). The pool tank is surrounded by at least 2.0 meters (6.5 feet) of concrete and 0.6 meters (2 feet) of water. A detailed description of the reactor can be found in the MUTR Safety Analysis Report (SAR).

The licensee has not requested any changes to the facility design or operating conditions as part of the application for license renewal. No changes are being made in the types or quantities of effluents that may be released off site. The licensee has systems in place for controlling the release of radiological effluents and implements a radiation protection program to monitor personnel exposures and releases of radioactive effluents. As discussed in the NRC staff's SE, the systems and radiation protection program are appropriate for the types and quantities of effluents expected to be generated by continued operation of the reactor. Accordingly, there would be no increase in routine occupational or public radiation exposure as a result of license renewal. A separate SE to determine the probability and consequence of accidents of the proposed action is being drafted by NRC staff. If the NRC staff concludes in the SE that the probability and consequence of accidents are within NRC requirements, then the proposed license renewal will not have a significant environmental impact with respect to accidents.

Therefore, with the exception of the impacts associated with accidents which the NRC staff is evaluating separately from this EA, license renewal would not change the environmental impact of facility operation. The NRC staff evaluated information contained in the licensee's application and data reported to the NRC by the licensee for the last 5 years of operation to determine the projected radiological impact of the facility on the environment during the period of the renewed license. The NRC staff found that releases of radioactive material and personnel exposures were all well within applicable regulatory limits. Based on this evaluation, the NRC staff concluded that continued operation of the reactor would not have a significant environmental impact.

A. Radiological Impacts

Environmental Effects of Reactor Operations

Gaseous radioactive effluents are discharged by the facility exhaust system via vents located on the roof of the reactor building, through a rollup door, and personnel door located on the north side of the facility. The current primary path for gaseous effluents is through those two doors. The only significant nuclide found in the gaseous effluent stream is argon-41. The licensee estimates argon-41 releases from a calculated release of argon-41 based on hours of reactor operation. Licensee calculations indicate that annual argon-41 releases result in an offsite concentration of argon-41 which is below the limit of 1.0E–8 microcuries per milliliter specified in 10 CFR part 20, Appendix b, ''Annual Limits on Intake (ALIs) and Derived Air Concentrations (DACs) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sewerage,'' for air effluent releases. The NRC staff reviewed the licensee's calculations and found them to be reasonable. Total gaseous radioactive releases reported to the NRC in the licensee's annual reports were less than the air effluent concentration limits set by 10 CFR part 20, Appendix b. The potential radiation dose to a member of the general public resulting from this concentration is less than 2 millirem (0.02 milliSieverts) and complies with the dose limit of 100 millirem (1 milliSievert) set by 10 CFR 20.1301, ''Dose limits for individual members of the public.'' Additionally, this potential radiation dose complies with the air emissions dose constraint of 0.1 milliSievert (10 millirem) specified in 10 CFR 20.1101(d).

The licensee disposes of liquid radioactive wastes by discharge to the sanitary sewer, in accordance with the requirements of 10 CFR 20.2003(a). During the past 5 years, the licensee has reported in its annual reports, no routine releases of liquid radioactive waste. No significant solid low-level radioactive waste was generated at the MUTR. According to the licensee, no spent nuclear fuel has been shipped from the site to date. To comply with the Nuclear Waste Policy Act of 1982, UMD has entered into a contract with the U.S. Department of Energy (DOE) that provides that DOE retains title to the fuel utilized at the MUTR and that DOE is obligated to take the fuel from the site for final disposition.

Data reported to the NRC by the licensee shows that personnel exposures are well within the total effective dose equivalent limit of 5,000 millirem (50 milliSievert) set by 10 CFR 20.1201, ''Occupational dose limits for adults,'' and as low as reasonably achievable. Fixed mounted dosimeters are mounted on the east and west exterior walls of the reactor building and provide gross quarterly readings (not adjusted for background) of total radiation exposures at those locations. These dosimeters typically measure average annual doses of approximately 87 millirem (0.87 milliSievert). No changes in reactor operation that would lead to an increase in occupational dose are expected as a result of the proposed action.

The licensee conducts an environmental monitoring program to record and track the radiological impact of MUTR operation on the surrounding unrestricted area. The program consists of quarterly exposure measurements at four locations on the site boundary and at two control locations away from any direct influence from the reactor. The Radiation Protection Officer administers the program and maintains the appropriate records. Over the past 5 years, the survey program indicated that radiation exposures at the monitoring locations were not significantly higher than those measured at the control locations. Year-to-year trends in exposures are consistent between monitoring locations. Also, no correlation exists between total annual reactor operation and annual exposures measured at the monitoring locations.

Based on the NRC staff's review of the past 5 years of the licensee's annual reports, the NRC staff concludes that continued operation of the MUTR would not have a significant radiological impact on the surrounding environment. No changes in reactor operation that would affect off-site radiation levels are expected as a result of license renewal.

Environmental Effects of Accidents

Accident scenarios are discussed in Chapter 13 of the MUTR SAR. The maximum hypothetical accident is the uncontrolled release of the gaseous fission products contained in the gap between the fuel and the fuel cladding in one fuel element to the reactor confinement and into the environment. The licensee conservatively calculated doses to facility personnel, the maximum potential dose to a member of the public, and the dose at the nearest residence. The NRC staff checked the licensee's calculations to verify that the doses represent conservative estimates for the maximum hypothetical accident. Occupational doses resulting from this accident would be 12 millirem (0.12 milliSievert), below the 10 CFR part 20, ''Standards for Protection Against Radiation,'' annual limit of 5,000 millirem (50 mSievert). Maximum doses for members of the public resulting from this accident would be 99 millirem (0.99 mSievert), below the 10 CFR part 20

annual limit of 100 millirem (1.0 mSievert). The proposed action will not increase the probability or consequences of accidents.

B. Non-Radiological Impacts

The MUTR core is located near the bottom of the reactor pool. The pool contains approximately 22.7 m^3 (6,000 gallons) of water which acts as a coolant for the reactor core and provides a large heat sink. The water in the pool is cooled by a primary cooling system consisting of a primary pump, a heat exchanger, a filtration and demineralizer water processing system, and associated piping. Cooling of the reactor core is by natural convection of the water through the reactor core. The water enters the cooling channels at the bottom of the core, warms as heat from the fission process is transferred to the water, and rises out of the core and into the bulk pool water. The reactor can run for several hours without operating the primary cooling system to remove heat from the reactor pool because of the large heat sink provided by the volume of water in the pool. When heat needs to be removed from the reactor pool the primary cooling system is operated. The primary coolant is cooled by secondary coolant in the heat exchanger, the secondary coolant is an open loop of city water that is discharged to the sanitary sewer. The MUTR facility annual usage of city water is minimal, less than 1 percent of the total University consumption. During operation, the secondary system is maintained at a higher pressure than the primary system to minimize the likelihood of primary system contamination entering the secondary system, and ultimately the environment. Additional controls are included in the facility design, as indicated in the MUTR Environmental Report, included in the licensee's application, ''. . . to preclude the contamination of the city water supply by the reactor facility, the city water supply passes through a backflow prevention valve after entering the reactor pump room before it is distributed to the make-up water and cooling systems.''

The reactor's low power level results in a small amount of heat that is released to the environment. Release of this heat (thermal effluent) from the MUTR facility will not have a significant effect on the environment. As stated above, minimal amounts of secondary water discharges to the sanitary sewer system after passing through the primary heat exchanger.

The Department of Environmental Safety, Sustainability, and Risk provides the University of Maryland community with information to comply with Federal, State, local and university requirements for managing hazardous and other regulated wastes. Because there is no cooling tower, secondary water treatment chemicals are not used at the MUTR facility. Small amounts of chemicals may be used at the MUTR facility that are typical of what is used in a university research environment. What chemicals or hazardous waste that is produced in conjunction with operation of the facility is disposed of in accordance with campus hazardous waste procedures maintained by the Department of Environmental Safety, Sustainability, and Risk.

Because the proposed action does not involve any change in the operation of the reactor, water use at the reactor is a small percentage of the university's water use, chemical use is small and disposal complies with all requirements, and the heat dissipated to the environment is minimal, the NRC staff concludes that the non-radiological impacts from proposed action will not have a significant impact on the environment.

National Environmental Policy Act (NEPA) Considerations

The NRC has responsibilities that are derived from NEPA and from other environmental laws, which include the Endangered Species Act, Coastal Zone Management Act, National Historic Preservation Act (NHPA), Fish and Wildlife Coordination Act, and Executive Order 12898, Environmental Justice. The following presents a brief discussion of impacts associated with these laws and other requirements.

1. Endangered Species Act

The Wildlife and Heritage Service of the Maryland Department of Natural Resources has stated that there are no State or Federal records documenting rare, threatened, or endangered species within the boundaries of the MUTR site. Based on this information, the NRC staff finds that the potential impacts of the proposed action would have no adverse effect on rare, threatened, or endangered species within the MUTR site boundary.

2. Coastal Zone Management Act

The MUTR is not located within any managed coastal zones; nor would the MUTR effluents and emissions impact any managed coastal zones. Based on this information, the NRC staff finds that the potential impacts of the proposed action would not adversely affect managed coastal zones.

3. National Historic Preservation Act

The NHPA requires Federal agencies to consider the effects of their undertakings on historic properties. The National Register of Historic Places lists historic properties in the vicinity of the MUTR and the UMD. The State Historic Preservation Office (SHPO) was contacted and a project review form was submitted. The SHPO determined that license renewal would have no adverse effect on historic properties in the vicinity of the MUTR. Based on this information, the NRC staff finds that the potential impacts of the proposed action would have no adverse effect on historic and archaeological resources.

4. Fish and Wildlife Coordination Act

The licensee is not planning any water resource development projects, including any of the modifications relating to impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage. Based on this information, the NRC staff finds that the potential impacts of the proposed action would not adversely affect water resource near the MUTR site boundary.

5. Executive Order 12898—Environmental Justice

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the relicensing and the continued operation of the MUTR. Such effects may include human health, biological, cultural, economic, or social impacts.

Minority Populations in the Vicinity of the MUTR—According to the 2010 Census, approximately 49 percent of the total population (total of approximately 7,900,000 individuals) residing within a 50-mile radius of MUTR identified themselves as minority. The largest minority population were Black or African American (2,172,000 persons or 27 percent), followed by Hispanic, Latino, or Spanish origin of any race (approximately 871,000 persons or 11 percent). According to the U.S. Census Bureau's 2010 Census, about 85.1 percent of the Prince George's County population identified themselves as minorities, with persons of Black or African American origin comprising the largest minority group (64.5 percent). According to the U.S. Census Bureau's 2014 American Community Survey 1-Year Estimates, the minority population of Prince George's County, as a percent

of the total population, had increased to 85.9 percent.

Low-income Populations in the Vicinity of the MUTR—According to the U.S. Census Bureau's 2010–2014 American Community Survey 5-Year Estimates, approximately 124,000 families and 736,000 individuals (6.4 and 9.2 percent, respectively) residing within a 50-mile radius of the MUTR were identified as living below the Federal poverty threshold. The 2014 Federal poverty threshold was $24,230 for a family of four.

According to the U.S. Census Bureau's 2014 American Community Survey 1-Year Estimates, the median household income for Maryland was $73,971, while 7.1 percent of families and 10.1 percent of the state population were found to be living below the Federal poverty threshold. Prince George's County had a lower median household income average ($72,290) and a similar percentage of families (7.0 percent) and individuals (10.2 percent) living below the poverty level, respectively.

Impact Analysis—Potential impacts to minority and low-income populations would mostly consist of radiological effects, however radiation doses from continued operations associated with the license renewal are expected to continue at current levels, and would be below regulatory limits.

Based on this information and the analysis of human health and environmental impacts presented in this environmental assessment, the NRC staff concludes that the proposed license renewal would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of the MUTR.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to license renewal, the NRC considered denying the proposed action. If the NRC denied the request for license renewal, reactor operations would cease and decommissioning would be required. The NRC staff notes that, even with a renewed license, the MUTR will eventually require decommissioning, at which time the environmental effects of decommissioning will occur. Decommissioning will be conducted in accordance with an NRC-approved decommissioning plan which would require a separate environmental review under 10 CFR 51.21. Cessation of facility operations would reduce or eliminate radioactive effluents and emissions. However, as previously discussed in this environmental assessment, radioactive effluents and emissions from reactor operations constitute only a small fraction of the applicable regulatory limits. Therefore, the environmental impacts of license renewal and the denial of the request for license renewal would be similar. In addition, denying the request for license renewal would eliminate the benefits of teaching, research, and services provided by the MUTR.

Alternative Use of Resources

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously considered in the issuance of Amendment No. 7 to Facility Operating License No. R–70 for the MUTR, dated August 7, 1984, which renewed the Facility Operating License for a period of 20 years.

Agencies and Persons Consulted

In accordance with the agency's stated policy, on December 9, 2016, the NRC staff provided the Maryland State Nuclear Emergency Preparedness Coordinator an email of the staff's environmental assessment for publishing in the **Federal Register** regarding the environmental impact of the proposed action. The correspondence involved a thorough explanation of the environmental review, the details of this environmental assessment, and the NRC staff's findings. The State official responded by email December 16, 2016 and indicated the state of Maryland had no comments with this action.

III. Finding of No Significant Impact

The NRC staff has prepared this EA as part of its review of the proposed action. On the basis of the EA included in Section II above and incorporated by reference in this finding, the NRC finds that there are no significant environmental impacts from the proposed action, and the proposed action will not have a significant effect on the quality of the human environment. The NRC staff has determined that a FONSI is appropriate, and decided not to prepare an environmental impact statement for the proposed action.

IV. Availability of Documents

The following table identifies the environmental and other documents cited in this document and related to the NRC's FONSI. These documents are available for public inspection online through ADAMS at *http://www.nrc.gov/reading-rm/adams.html* or in person at the NRC's PDR as described previously.

Document	ADAMS Accession No.
University of Maryland, Request for Renewal of Class 104 Operating License R–70., May 12, 2000	ML052910399
University of Maryland—Request for Additional Information Re: Renewal of License R–70, October 10, 2002	ML022690533
Transmittal of the University of Maryland's Response to the Request for Additional Information Pertaining to Sections Six through Ten of the Safety Analysis Report (SAR), June 7, 2004	ML041800348
University of Maryland's Response to the Request for Additional Information Re: Environmental Report for Training Reactor, August 4, 2004	ML042240227
Submittal of Additional Information as it Pertains to Section Eleven of the Safety Analysis Report for the Maryland University Training Reactor, September 17, 2004	ML042940317
Response to the Request for Additional Information as it Pertains to Section Twelve of the Safety Analysis Report for the Maryland University Training Reactor, October 7, 2004	ML042940408
University of Maryland—Response to RAI Regarding the Technical Specifications for the Maryland University Training Reactor, April 18, 2005	ML051160054
University of Maryland's Response to Request for Additional Information, as it Pertains to Section Two of Safety Analysis Report for Maryland University Training Reactor, April 25, 2006	ML061250233
University of Maryland's Response to Request for Additional Information, as it Pertains to Section Two of Safety Analysis Report for Maryland University Training Reactor, April 25, 2006	ML061280383
University of Maryland Responses to RAIs on the SAR, August 28, 2006	ML101970209
University of Maryland's Response to Request for Additional Information, September 7, 2006	ML16083A222
University of Maryland's Responses to RAIs on the SAR, November 9, 2006	ML101970210

Document	ADAMS Accession No.
University of Maryland's Response to Request for Additional Information as it Pertains to Technical Specifications for Maryland University Training Reactor, December 18, 2006	ML101480913
University of Maryland, Request for Additional Information Regarding the License Renewal for the Maryland University Training and Research Reactor, December 10, 2009	ML093420068
University of Maryland, Request for Additional Information Regarding License Renewal Technical Matters (TAC ME1592), April 6, 2010	ML100840239
University of MD Training Reactor (MUTR)—Submitting Responses to NRC 12/10/09 Request for Additional Information Regarding Financial Qualifications for Renewal of License, May 27, 2010	ML101670413
University of Maryland Responses Request for Additional Information Regarding the License Renewal for Maryland University Training Reactor, July 28, 2010	ML102110049
University of Maryland Training Reactor, Request for Additional Information Regarding License Renewal Revised Technical Specifications dated December 18, 2006 (TAC No. ME1592), August 20, 2010	ML102230338
University of Maryland, Request for Additional Information Regarding the License Renewal for the Maryland University Training Reactor, September 22, 2010	ML102710556
University of Maryland, Maryland University Training Reactor (MUTRA), Request for Additional Information (RAI) Regarding Remaining Technical Specifications, January 31, 2011	ML110320459
University of Maryland, Maryland University Training Reactor, Response to Request No. #2 to the NRC's April 6, 2010 Request for Additional Information, February 2, 2011	ML110350175
University of Maryland, Maryland University Training Reactor (''MUTR''), Technical Specifications, Response to February 18, 2011, Request for Additional Information (''RAI'') Regarding Remaining Technical Specifications, May 2, 2011	ML11124A124
University of Maryland, NRC Response to Letter Dated May 2, 2011, June 22, 2011	ML11171A566
University of Maryland, Maryland, Response to Request for Additional Information in Regard to Remaining Technical Specifications, July 5, 2011	ML11189A065
University of Maryland, Response to Request for Additional Information Regarding Dose to General Public in the Event of Maximum Hypothetical Accident (MHA), July 29, 2011	ML11215A130
University of Maryland—Request for Additional Information Regarding the License Renewal for the Maryland University Training Reactor (Related to May 2, 2011) (TAC No. ME1592), August 26, 2011	ML112130086
University of Maryland—Request for Additional Information Regarding Dose Calculations, September 8, 2011	ML112380621
University of Maryland, Request for Additional Information Regarding License Renewal for Maryland University Training Reactor (TAC No. ME1592), September 28, 2011	ML11277A026
University of Maryland—Request for Additional Information Regarding the License Renewal for the Maryland University Training Reactor, October 12, 2011	ML11286A337
University of Maryland—Response to NRC Request for Additional Information Regarding the License Renewal for the Maryland University Training Reactor, February 9, 2012	ML12060A344
University of Maryland—Request for Additional Information Re: Reactor Operator Requalification Program, February 15, 2012	ML102660113
University of Maryland—Request for Additional Information Re: Reactor Operator Requalification Program (TAC No. ME2431), March 14, 2012	ML12081A017
University of Maryland, Request for Additional Information Regarding the License Renewal for the Maryland University Training Reactor (''MUTR''), May 22, 2012	ML12172A139
University of Maryland—Request for Additional Information, Re: Reactor Operator Requalification Program (TAC ME2431), July 16, 2012	ML121870709
University of Maryland, Response to Request for Additional Information Regarding the License Renewal for the Training Reactor (''MUTR''), August 29, 2012	ML12255A400
University of Maryland—Review and Approval of the Requalification Training Program for Licensed Operators (TAC No. ME1592), November 15, 2012	ML12306A112
University of Maryland—License Renewal for the Maryland University Training Reactor (MUTR), TAC ME1592), March 21, 2013	ML13095A006
University of Maryland, College Park Request for Additional Information Re: Financial Update for License Renewal for the University of Maryland (TAC ME1592), June 2, 2014	ML14141A630
University of Maryland Training Reactor—Report on AR–41 Mitigation, June 18, 2014	ML14176A078
University of Maryland—Request for Additional Information Re: Review of the Argon–41 Radiological Dose Assessment for License Renewal (TAC ME1592), September 25, 2014	ML14266A658
University of Maryland, Response to Request for Additional Information Regarding Financial Update for License Renewal, November 25, 2014	ML14342A563
University of Maryland—Request for Additional Information Re: Review of the ARGON–41 Radiological Dose Assessment for License Renewal of the Maryland University Training Reactor (TAC No. ME1592), November 25, 2014	ML14332A300
University of Maryland—Revised Physical Security Plan For License Renewal of The Maryland University Training Reactor (TAC ME1592) License No. 70; Docket No. 50–166, December 19, 2014	ML14364A086
Letter Request for Additional Information RE: Physical Security Plan Review for License Renewal (TAC No. ME1592), March 12, 2015	ML15058A276
University of Maryland—Request for Additional Information for License Renewal of the Maryland University Training Reactor (TAC No. ME1592), August 21, 2015	ML15083A383
University of Maryland—Request for Additional Information for License Renewal of the Maryland University Training Reactor Pertaining to Thermal Hydraulics, September 10, 2015	ML15219A471
University of Maryland—Request for Additional Information for License Renewal Pertaining to Thermal Hydraulics, December 2, 2015	ML15349A894
University of Maryland—Response to Request for Additional Information for License Renewal, January 5, 2016	ML16008A072
University of Maryland—Request for Additional Information Re: For the Renewal of Facility Operating License No. R–70 the Maryland University Training Reactor Docket No. 50–166, February 29, 2016	ML16061A003
University of Maryland—Request for Additional Information Re: For the Renewal of Facility Operating License No. R–70 the Maryland University Training Reactor Docket No. 50–166, November 17, 2016	ML16323A447

Dated at Rockville, Maryland, this 16th day of December 2016.

For the Nuclear Regulatory Commission.

Alexander Adams, Jr.,

Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–30863 Filed 12–21–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2017–54 and CP2017–80; MC2017–55 and CP2017–81; MC2017–56 and CP2017–82; MC2017–57 and CP2017–83; CP2017–84; CP2016–32; CP2016–35]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 23, 2016 (Comment due date applies to Docket Nos. MC2017–54 and CP2017–80; Docket Nos. MC2017–55 and CP2017–81; Docket Nos. MC2017–56 and CP2017–82); and December 27, 2016 (Comment due date applies to Docket Nos. MC2017–57 and CP2017–83; Docket No. CP2017–84; Docket No. CP2016–32; Docket No. CP2016–35).

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2017–54 and CP2017–80; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 277 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* December 15, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Jennaca D. Upperman; *Comments Due:* December 23, 2016.

2. *Docket No(s).:* MC2017–55 and CP2017–81; *Filing Title:* Request of the United States Postal Service to Add First-Class Package Service Contract 70 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* December 15, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Erin Mahagan; *Comments Due:* December 23, 2016.

3. *Docket No(s).:* MC2017–56 and CP2017–82; *Filing Title:* Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 42 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* December 15, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Erin Mahagan; *Comments Due:* December 23, 2016.

4. *Docket No(s).:* MC2017–57 and CP2017–83; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 278 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* December 15, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Max E. Schnidman; *Comments Due:* December 27, 2016.

5. *Docket No(s).:* CP2017–84; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* December 15, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Max E. Schnidman; *Comments Due:* December 27, 2016.

6. *Docket No(s).:* CP2016–32; *Filing Title:* Notice of United States Postal Service of Amendment to Priority Mail Express & Priority Mail Contract 23, with Portions Filed Under Seal; *Filing Acceptance Date:* December 15, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 27, 2016.

7. *Docket No(s).:* CP2016–35; *Filing Title:* Notice of United States Postal Service of Amendment to Priority Mail Contract 160, with Portions Filed Under Seal; *Filing Acceptance Date:* December 15, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 27, 2016.

This notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–30797 Filed 12–21–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 22, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 15, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 278 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–57, CP2017–83.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–30798 Filed 12–21–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 22, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 15, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 277 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–54, CP2017–80.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–30799 Filed 12–21–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 22, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 15, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 70 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–55, CP2017–81.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–30789 Filed 12–21–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 22, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 15, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 42 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–56, CP2017–82.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–30790 Filed 12–21–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79587; File Nos. SR–NYSE–2011–55; SR–NYSEAmex–2011–84]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Order Granting an Extension to Limited Exemptions From Rule 612(c) of Regulation NMS In Connection With the Exchanges' Retail Liquidity Programs Until June 30, 2017

December 16, 2016

On July 3, 2012, the Securities and Exchange Commission (''Commission'') issued an order pursuant to its authority under Rule 612(c) of Regulation NMS (''Sub-Penny Rule'')[1] that granted the New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC[2] (''NYSE MKT'' and, together with NYSE, the ''Exchanges'') limited exemptions from the Sub-Penny Rule in connection with the operation of the Exchanges' respective Retail Liquidity Programs (''Programs'').[3] The limited exemptions were granted concurrently with the Commission's approval of the Exchanges' proposals to adopt their respective Programs for one-year pilot terms.[4] The exemptions were granted coterminous with the effectiveness of the pilot Programs; both the pilot Programs and exemptions are scheduled to expire on December 31, 2016.[5]

[1] 17 CFR 242.612(c).

[2] At the time it filed the original proposal to adopt the Retail Liquidity Program, NYSE MKT went by the name NYSE Amex LLC. On May 14, 2012, the Exchange filed a proposed rule change, immediately effective upon filing, to change its name from NYSE Amex LLC to NYSE MKT LLC. *See* Securities Exchange Act Release No. 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR–NYSEAmex–2012–32).

[3] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55; SR–NYSEAmex–2011–84) (''Order'').

[4] *See id.*

[5] The pilot terms of the Programs were originally scheduled to end on July 31, 2013, but the Exchanges initially extended the terms for an

Continued

The Exchanges now seek to extend the exemptions until June 30, 2017.[6] The Exchanges' request was made in conjunction with immediately effective filings that extend the operation of the Programs through the same date.[7] In their request to extend the exemptions, the Exchanges note that the participation in the Programs has increased more recently. Accordingly, the Exchanges have asked for additional time to allow themselves and the Commission to analyze more robust data concerning the Programs, which the Exchanges committed to provide to the Commission.[8] For this reason and the reasons stated in the Order originally granting the limited exemptions, the Commission finds that extending the exemptions, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, each Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in connection with the operation of its Retail Liquidity Program, until June 30, 2017.

The limited and temporary exemptions extended by this Order are subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2016–30815 Filed 12–21–16; 8:45 am]

BILLING CODE 8011–01–P

additional year, through July 31, 2014, *see* Securities Exchange Act Release Nos. 70096 (August 2, 2013), 78 FR 48520 (Aug. 8, 2013) (SR–NYSE–2013–48), and 70100 (Aug. 2, 2013), 78 FR 48535 (Aug. 8, 2013) (SR–NYSEMKT–2013–60), and then, through various extensions, through December 31, 2016. *See* Securities Exchange Act Release Nos. 72629 (July 16, 2014), 79 FR 42564 (July 22, 2014) (SR–NYSE–2014–35); 72625 (July 16, 2014), 79 FR 42566 (July 22, 2014) (SR–NYSEMKT–2014–60); 74454 (Mar. 6, 2015), 80 FR 13054 (Mar. 12, 2015) (SR–NYSE–2015–10); 74455 (Mar. 6, 2015), 80 FR 13047 (Mar. 12, 2015) (SR–NYSEMKT–2015–14); 75993 (Sept. 28, 2015), 80 FR 59844 (Oct. 2, 2015) (SR–NYSE–2015–41); 75995 (Sept. 28, 2015), 80 FR 59836 (Oct. 2, 2015) (SR–NYSEMKT–2015–69); 77426 (Mar. 23, 2016), 81 FR 17533 (Mar. 29, 2016) (SR–NYSE–2016–25); 77424 (Mar. 23, 2016), 81 FR 17522 (Mar. 29, 2016) (SR–NYSEMKT–2016–39); 78600 (Aug. 17, 2016), 81 FR 57642 (Aug. 23, 2016) (SR–NYSE–2016–54); and 78602 (Aug. 17, 2016), 81 FR 57639 (Aug. 23, 2016) (SR–NYSEMKT–2016–76). Each time the pilot terms of the Programs were extended, the Commission also granted the Exchanges' requests to extend the Sub-Penny exemptions. *See* Securities Exchange Act Release Nos. 70085 (July 31, 2013), 78 FR 47807 (Aug. 6, 2013); 72732 (July 31, 2014), 79 FR 45851 (Aug. 6, 2014); 74507 (Mar. 13, 2015), 80 FR 14421 (Mar. 19, 2015); 76020 (Sept. 29, 2015), 80 FR 60201 (Oct. 5, 2015); 77438 (Mar. 24, 2016), 81 FR 17752 (Mar. 30, 2016); and 78678 (Aug. 25, 2016), 81 FR 60031 (Aug. 31, 2016). The current exemptions expire December 31, 2016.

[6] *See* Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated November 28, 2016.

[7] *See* Securities Exchange Act Release Nos. 79493 (Dec. 7, 2016), 81 FR 90019 (Dec. 13, 2016) (SR–NYSE–2016–82), and 79509 (Dec. 8, 2016), 81 FR 90389 (Dec. 14, 2016) (SR–NYSEMKT–2016–112).

[8] *See* Order, *supra* note 3, 77 FR at 40681.

[9] 17 CFR 200.30–3(a)(83).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79582; File No. SR–NYSE–2016–70]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 902.02 of the NYSE Listed Company Manual To Adopt a Fee Cap Specific to Investment Management Entities and Their Eligible Portfolio Companies

December 16, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 5, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.02 of the NYSE Listed Company Manual (the ''Manual'') to adopt a fee cap specific to Investment Management Entities and their eligible portfolio companies. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 902.02 of the Manual to adopt a fee cap specific to Investment Management Entities and their eligible portfolio companies.

An Investment Management Entity for purposes of this provision would be defined as a listed company which manages private investment vehicles that are not registered under the Investment Company Act. There are a small number of such companies listed on the NYSE that engage in the business of managing such private equity funds. Through these private equity funds, Investment Management Entities invest in private companies. Investment Management Entities typically provide significant managerial and advisory assistance to their portfolio companies. An Investment Management Entity will frequently seek to exit its funds' investment in a privately-held portfolio company by conducting an initial public offering on behalf of that portfolio company. The Investment Management Entity does not typically sell shares in the IPO but, rather, shares not sold in the IPO are gradually sold off over a period of years in the public market. While these Investment Management Entities have control or influence over the decision making of their portfolio companies in both their pre- and post-public phases, the decision as to where to list is typically made jointly by the portfolio company's senior management team and the Investment Management Entity. The Exchange benefits from its ongoing

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

relationships with these Investment Management Entities (and members of the management teams that had previously dealt with the Exchange) when competing for the listing of their portfolio companies. In addition, the Exchange benefits from the efficiencies in dealing with portfolio companies that are benefiting from the guidance and experience of the Investment Management Entities to which they are related.

The Exchange incurs substantial costs in connection with its marketing to companies choosing a listing venue for their IPO. In those cases where the Exchange has a longstanding relationship with the Investment Management Entity controlling a listing applicant, the Exchange's costs of marketing to the prospect company are often much lower than usual because of the Investment Management Entity's prior experience with the NYSE. Typically, when pitching for the listing of a company that is choosing a listing venue for its IPO, the Exchange incurs significant expense, including the time spent by its CEO and other senior management in preparing for and traveling to meetings with the prospect company, travel costs, the cost of developing pitching strategies, and the cost of producing marketing materials. In addition, it has been the Exchange's experience that an Investment Management Entity puts high-quality and experienced management teams in place at its portfolio companies prior to listing and that the Investment Management Entity continues to provide significant support to those companies after listing. Consequently, those companies require lower levels of support from the NYSE's business and Regulation groups to assist them in navigating the initial and continued listing process and the Exchange devotes significantly smaller staff resources to those companies on average than to the typical newly-listed company that is not controlled prior to listing by an Investment Management Entity.

The Exchange believes that these cost savings attributable to its relationship with an Investment Management Entity make it desirable and reasonable to provide a reduction in continued listing fees to the Investment Management Companies that are significant shareholders in other listed companies, as well as to those portfolio companies that have listed as a consequence of those relationships. The Exchange also believes that the proposed fee reduction would provide an incentive to Investment Management Entities to both remain listed themselves and to list additional portfolio companies on the Exchange.

Under Section 902.02, all listed companies are eligible to benefit from limitations on most fees (including Listing Fees and Annual Fees) (''Eligible Fees'') payable to the Exchange in a calendar year of $500,000 (the ''Total Maximum Fee'').[4] The Exchange proposes to amend Section 902.02 to add a separate limitation on Eligible Fees applicable only to Investment Management Entities and their eligible portfolio companies (''Eligible Portfolio Companies''), with effect from the calendar year commencing January 1, 2017 (the ''Investment Management Entity Group Fee Discount''). An ''Eligible Portfolio Company'' of an Investment Management Entity is a company in which the Investment Management Entity has owned at least 20% of the common stock on a continuous basis since prior to that company's initial listing. The Investment Management Entity Group Fee Discount would be as follows:

- A 30% discount on all Eligible Fees of an Investment Management Entity and each of its Eligible Portfolio Companies in any year in which the Investment Management Entity has two Eligible Portfolio Companies.
- a 50% discount on all Eligible Fees of an Investment Management Entity and each of its Eligible Portfolio Companies in any year in which the Investment Management Entity has three or more Eligible Portfolio Companies.

The Investment Management Entity Group Fee Discount would be subject to a maximum aggregate discount of $500,000 for the Investment Management Entity and each of its Eligible Portfolio Companies in any given year (the ''Maximum Discount''). The Maximum Discount would be shared among the Investment Management Entity and the Eligible Portfolio Companies in direct proportion to their respective Eligible Fees. In addition to benefiting from the Investment Management Entity Group Fee Discount, the Investment Management Entity and each of the Eligible Portfolio Companies would each continue to have its fees capped by the applicable company's individual Total Maximum Fee of $500,000.

Below are two examples:

- An Investment Management Entity owes the Total Maximum Fee of $500,000. The Investment Management Entity and its three Eligible Portfolio Companies as a group owe an aggregate of $1.0 million in Eligible Fees before application of the 50% discount. The aggregate 50% discount for the group upon application of the Management Entity Group Fee Discount would be $500,000. As the Investment Management Entity's proportionate share of the aggregate fees owed by the group would be 50% ($500,000/$1.0 million), the Investment Management Entity would receive a $250,000 discount (50% of the $500,000 maximum Investment Management Entity Group Fee Discount), resulting in total Eligible Fees for the Investment Management Entity in that year of $250,000 ($500,000 minus $250,000). The Eligible Portfolio Companies would share the remaining $250,000 discount available under the Maximum Discount in proportion to their respective Eligible Fee obligations for that calendar year.
- An Investment Management Entity owes $400,000 in Eligible Fees. The Investment Management Entity and its two Eligible Portfolio Companies as a group owe an aggregate of $1.0 million in Eligible Fees before application of the 30% discount. The aggregate 30% discount for the group upon application of the Investment Management Entity Group Fee Discount would be $300,000. As the Investment Management Entity's proportionate share of the aggregate fees owed by the group would be 40% ($400,000/$1.0 million), the Investment Management Entity would receive a $120,000 discount (40% of the $300,000 aggregate Investment Management Entity Group Fee Discount), resulting in total Eligible Fees for the Investment Management Entity in that year of $280,000 ($400,000 minus $120,000). The Eligible Portfolio Companies would share the remaining $180,000 discount available under the Investment Management Entity Group Fee Discount in proportion to the amounts of their respective Eligible Fee obligations for that calendar year.

In order to qualify for the Investment Management Entity Group Fee Discount in any calendar year for itself and its Eligible Portfolio Companies, an Investment Management Entity must submit satisfactory proof to the Exchange no later than December 31 that it has met the ownership requirements specified for the entire period between January 1 and September 30 of that year.

In the event that a listed company qualifies as an Eligible Portfolio

[4] The Total Maximum Fee cap, however, does not include the following fees: (i) Listing Fees and Annual Fees for Investment Company Units, streetTRACKS® Gold Shares, Currency Trust Shares, and Commodity Trust Shares; (ii) Listing Fees and Annual Fees for closed-end funds; (iii) Listing Fees for structured products; and (iv) Annual Fees for structured products other than retail debt securities.

Company of two or more Investment Management Entities, for purposes of the Investment Management Entity Group Fee Discount, such company will be treated as an Eligible Portfolio Company only of the Investment Management Entity which has the largest equity interest in such Eligible Portfolio Company. If two or more of such Investment Management Entities own identical equity interests in such listed company, such company will be treated as an Eligible Portfolio Company of each of such Investment Management Entities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[5] in general, and furthers the objectives of Sections 6(b)(4)[6] of the Exchange Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges and is not designed to permit unfair discrimination among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act, in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange is proposing to adopt fee discounts for listed Investment Management Entities and their Eligible Portfolio Companies. The Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Exchange Act in that it represents an equitable allocation of fees and does not unfairly discriminate among listed companies. In particular, the Exchange believes the proposal represents an equitable allocation of fees and is not unfairly discriminatory because the Exchange benefits from significant cost and resource-utilization savings when listing portfolio companies of Investment Management Entities as it does not have to engage in significant marketing efforts as the decision makers at the Investment Management Entity are very familiar with the Exchange. Typically when pitching for the listing of a company that is choosing a listing venue for its IPO, the Exchange incurs significant expense, including: The time spent by its CEO and other senior management in preparing for and traveling to meetings with the prospect company, travel costs, the cost of developing pitching strategies, and the cost of producing marketing materials. As the Exchange saves much of this expense when pitching to a portfolio company of an Investment Management Entity with which the Exchange has a deep relationship, the Exchange believes that it is appropriate to share some of those savings with the Investment Management Entity and its Eligible Portfolio Companies. In addition, the Exchange typically has lower costs and resource utilization in connection with the initial and continued listing of Eligible Portfolio Companies than with other new listings, as the Exchange benefit from dealing with the high-quality and experienced management teams Investment Management Entities put in place at portfolio companies prior to listing and the ongoing relationship those companies maintain with staff at the Investment Management Entity who are experienced in dealing with the NYSE. The Exchange also believes that the proposed discount is reasonable in that it will create a reasonable commercial incentive for Investment Management Entities and the management of their portfolio companies to consider listing on the Exchange and to remain listed.

The Exchange believes that it is not unfairly discriminatory to discount continued listing fees as a means of recognizing its cost savings related to the listing of an Investment Management Company and its Eligible Portfolio Companies. This is because a significant portion of the Exchange's savings arise from the efficiencies it experiences on an ongoing basis in dealing with Eligible Portfolio Companies for such time as the Investment Management Entity retains a significant investment and is thereby motivated to provide ongoing advice and assistance. In addition, the Investment Management Entity will in all cases already be listed on the Exchange and can therefore only share in the benefits of any fee discount if it is provided on a continued listing basis.

The Exchange believes that the tiered discounts of 30% and 50% are not unfairly discriminatory, as they are reasonably related to the cost savings the Exchange benefits from when dealing with an Investment Management Entity and its Eligible Portfolio Companies rather than an individual listed company. In addition, it is not unfairly discriminatory to provide a higher percentage discount when there are a greater number of Eligible Portfolio Companies as there are economies of scale in dealing with a larger group of related entities because the incremental resources devoted by the Exchange in dealing with each additional Eligible Portfolio Company tend to be less.

The Exchange believes that, where a company is an Eligible Portfolio Company of two or more Investment Management Entities, it is not unfairly discriminatory to provide the Investment Management Entity Group Fee Discount to the Investment Management Entity which has the largest ownership interest in the company as it would typically play the sole or lading leading role in advising the company. In the case where two or more Investment Management Entities own identical equity interests in a listed company, the Exchange believes it is not unfairly discriminatory to treat such company as an Eligible Portfolio Company of each of such Investment Management Entities, as all of them would typically provide significant levels of assistance to the company.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is designed to reflect the cost savings the Exchange derives from its relationship with listed Investment Management Entities whose portfolio companies also list on the Exchange. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [7] of the Act and subparagraph (f)(2) of Rule 19b–4 [8] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–70. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–70, and should be submitted on or before January 12, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30793 Filed 12–21–16; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 15 U.S.C. 78s(b)(2)(B).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79584; File No. SR–Phlx–2016–119]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the PIXL Price Improvement Auction in Phlx Rule 1080(n) and To Make Pilot Program Permanent

December 16, 2016

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 December 6, 2016, NASDAQ PHLX LLC (''Phlx'' 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. On December 15, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1080(n), concerning a price-improvement mechanism entitled ''Price Improvement XL'', also known as ''PIXL.'' Certain aspects of PIXL are currently operating on a pilot basis (''Pilot''), which was initially approved by the Commission in 2010,[3] and which is set to expire on January 18, 2017.[4] In this proposal, the Exchange proposes to make the Pilot permanent, and to change the requirements for providing price improvement for PIXL Auction Orders, other than Auctions involving Complex Orders, of less than 50 option contracts.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.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 this proposed rule change is to make permanent certain pilots within Rule 1080(n), relating to PIXL. In addition, Phlx proposes to modify the requirements for PIXL auctions involving less than 50 contracts (other than auctions involving Complex Orders) where the National Best Bid and Offer (''NBBO'') is only $0.01 wide.

Background

The Exchange adopted PIXL in October 2010 as a price-improvement

[3] *See* Securities Exchange Act Release No. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–Phlx–2010–108) (''PIXL Approval Order'').

[4] *See* Securities Exchange Act Release No. 78301 (July 12, 2016), 81 FR 46731 (July 18, 2016) (SR–PHLX–2016–75).

mechanism on the Exchange.[5] PIXL is a component of the Exchange's fully automated options trading system, PHLX XL®, that allows an Exchange member (an ''Initiating Member'') to electronically submit for execution an order it represents as agent on behalf of a public customer, broker dealer, or any other entity (''PIXL Order'') against principal interest or against any other order it represents as agent (an ''Initiating Order'') provided it submits the PIXL Order for electronic execution into the PIXL Auction (''Auction'') pursuant to the Rule.

An Initiating Member may initiate a PIXL Auction by submitting a PIXL Order, which is not a Complex Order, in one of three ways:

- First, the Initiating Member could submit a PIXL Order specifying a single price at which it seeks to execute the PIXL Order (a ''stop price'').
- Second, an Initiating Member could submit a PIXL Order specifying that it is willing to automatically match as principal or as agent on behalf of an Initiating Order the price and size of all trading interest and responses to the PIXL Auction Notification (''PAN,'' as described below) (''auto-match''), in which case the PIXL Order will be stopped at the better of the National Best Bid/Offer (''NBBO'') or the Reference BBO[6] on the Initiating Order side.
- Third, an Initiating Member could submit a PIXL Order specifying that it is willing to either: (i) Stop the entire order at a single stop price and auto-match PAN responses, as described below, together with trading interest, at a price or prices that improve the stop price to a specified price above or below which the Initiating Member will not trade (a ''Not Worse Than'' or ''NWT'' price); (ii) stop the entire order at a single stop price and auto-match all PAN responses and trading interest at or better than the stop price; or (iii) stop the entire order at the better of the NBBO or Reference BBO on the Initiating Order side, and auto-match PAN responses and trading interest at a price or prices that improve the stop price up to the NWT price. In all cases, if the PHLX Best Bid/Offer (''PBBO'') on the same side of the market as the PIXL Order represents a limit order on the book, the stop price must be at least one minimum price improvement increment better than the booked limit order's limit price.

In addition, an Initiating Member may initiate a PIXL Auction by submitting a Complex PIXL Order which is of a conforming ratio, as defined in Commentary .08(a)(i) and (a)(ix) to Rule 1080. When submitting a Complex PIXL Order, the Initiating Member must stop the PIXL Order at a price that is better than the best net price (debit or credit) (i) available on the Complex Order book regardless of the Complex Order book size; and (ii) achievable from the best PHLX bids and offers for the individual options (an ''improved net price''), provided in either case that such price is equal to or better than the PIXL Order's limit price.

After the PIXL Order is entered, a PAN is broadcast and a blind Auction ensues for a period of time as determined by the Exchange and announced on the Nasdaq Trader Web site. The Auction period will be no less than one hundred milliseconds and no more than one second. Anyone may respond to the PAN by sending orders or quotes. At the conclusion of the Auction, the PIXL Order will be allocated at the best price(s).

Once the Initiating Member has submitted a PIXL Order for processing, such PIXL Order may not be modified or cancelled. Under any of the above circumstances, the Initiating Member's stop price or NWT price may be improved to the benefit of the PIXL Order during the Auction, but may not be cancelled. Under no circumstances will the Initiating Member receive an allocation percentage, at the final price point, of more than 50% with one competing quote, order or PAN response or 40% with multiple competing quotes, orders or PAN responses, when competing quotes, orders or PAN responses have contracts available for execution. After a PIXL Order has been submitted, a member organization submitting the order has no ability to control the timing of the execution.

The Pilot

As described above, four components of the PIXL system are currently operating on a pilot basis: (i) Auction eligibility for Complex Orders in a PIXL Auction; (ii) the provision that an unrelated market or marketable limit order (against the PBBO) on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction; (iii) the early conclusion of a PIXL Auction; and (iv) no minimum size requirement of orders entered into PIXL. The pilot has been extended until January 18, 2017.[7]

As described in greater detail below, during the pilot period the Exchange has been required to submit, and has been submitting, certain data periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders, there is significant price improvement available through PIXL, and that there is an active and liquid market functioning on the Exchange both within PIXL and outside of the Auction mechanism. The Exchange has also analyzed the impact of certain aspects of the Pilot; for example, the early conclusion of an Auction due to the PBBO crossing the PIXL Order stop price on the same side of the market as the PIXL Order, or due to a trading halt.

The Exchange now seeks to have the Pilot approved on a permanent basis. In addition, the Exchange proposes to modify the scope of PIXL so that PIXL Orders for less than 50 option contracts, other than Auctions involving Complex Orders, will be required to receive price improvement of at least one minimum price improvement increment over the NBBO if the NBBO is only $0.01 wide. For orders of 50 contracts or more, or if the difference in the NBBO is greater than $0.01, and for Complex Orders, the requirements for price improvement remain the same.

Price Improvement for Orders Under 50 Contracts

Currently, a PIXL Auction may be initiated if all of the following conditions are met. If the PIXL Order (except if it is a Complex Order) is for the account of a public customer the Initiating Member must stop the entire PIXL Order (except if it is a Complex Order) at a price that is equal to or better than the National Best Bid/Offer

[5] In addition to the PIXL Approval Order and the most recent extension cited above, the following proposed rule changes have been submitted in connection with PIXL. *See* Securities Exchange Act Release Nos. 65043 (August 5, 2011), 76 FR 49824 (August 11, 2011) (SR-Phlx-2011–104) (Extending Pilot for Price Improvement System, Price Improvement XL); 67399 (July 11, 2012), 77 FR 42048 (July 17, 2012) (SR–Phlx–2012–94) (Extending Pilot for Price Improvement System, Price Improvement XL); 69845 (June 25, 2013), 78 FR 39429 (July 1, 2013) (SR–Phlx–2013–46) (Order Granting Approval To Proposed Rule Change, as Modified by Amendment No. 1, Regarding Complex Order PIXL); 69989 (July 16, 2013), 78 FR 43950 (July 22, 2013) (SR–Phlx–2013–74) (Extending Pilot for Price Improvement System, Price Improvement XL); 70654 (October 10, 2013), 78 FR 62891 (October 22, 2013) (SR–Phlx–2013–76) (Order Granting Approval to Proposed Rule Change Relating to the Discontinuation of the Differentiation of Price Improvement XL Orders of Less Than 50 Contracts); 72619 (July 16, 2014), 79 FR 42613 (July 22, 2014) (Extending Pilot for Price Improvement System, Price Improvement XL); and 75470 (July 16, 2015) 80 FR 43509 (July 22, 2015) (Amending Exchange Rule 1080(n), Price Improvement XL (''PIXL'') to Extend, Until July 18, 2016, a Pilot Program).

[6] The ''Reference BBO'' is defined as the ''internal market BBO.''

[7] *See* note 4 above.

(''NBBO'') and the internal market BBO (the ''Reference BBO'') on the opposite side of the market from the PIXL Order, provided that such price must be at least one minimum price improvement increment (as determined by the Exchange but not smaller than one cent) better than any limit order on the limit order book on the same side of the market as the PIXL Order.

If the PIXL Order (except if it is a Complex Order) is for the account of a broker dealer or any other person or entity that is not a public customer the Initiating Member must stop the entire PIXL Order (except if it is a Complex Order) at a price that is the better of: (i) The Reference BBO price improved by at least one minimum price improvement increment on the same side of the market as the PIXL Order, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO and the Reference BBO.

PHLX proposes to amend the PIXL auction to require at least $0.01 price improvement for a PIXL Order, except if it is a Complex Order, if that order is for less than 50 contracts and if the difference between the NBBO is $0.01. Accordingly, PHLX is proposing to amend the Auction Eligibility Requirements to require that, if the PIXL Order (except if it is a Complex Order) is for less than 50 option contracts, and if the difference between the NBBO is $0.01, the Initiating Member must stop the entire PIXL Order at one minimum price improvement increment better than the NBBO on the opposite side of the market from the PIXL Order, and better than any limit order on the limit order book on the same side of the market as the PIXL Order. This requirement will apply regardless of whether the PIXL Order is for the account of a public customer, or where the PIXL Order is for the account of a broker dealer or any other person or entity that is not a Public Customer. The Exchange will continue to require that the Initiating Member stop the entire PIXL Order at a price that is better than any limit order on the limit order book on the same side of the market as the PIXL Order regardless of the size of the PIXL Order and the width of the NBBO.

The Exchange will retain the current requirements for auction eligibility where the PIXL Order is for the account of a public customer and such order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01. The Exchange will also retain the current requirements for auction eligibility where the PIXL Order is for the account of a broker dealer or any other person or entity that is not a public customer and such order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01.

Accordingly, the Exchange is amending the Auction Eligibility Requirements to state that, if the PIXL Order (except if it is a Complex Order) is for the account of a public customer and such order is for 50 option contracts or more or if the difference between the NBBO is greater than $0.01, the Initiating Member must stop the entire PIXL Order at a price that is equal to or better than the NBBO on the opposite side of the market from the PIXL Order, provided that such price must be at least one minimum price improvement increment (as determined by the Exchange but not smaller than one cent) better than any limit order on the limit order book on the same side of the market as the PIXL Order.

Similarly, the Exchange is amending the Auction Eligibility Requirements to state that, if the PIXL Order (except if it is a Complex Order) is for the account of a broker dealer or any other person or entity that is not a public customer and such order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01, the Initiating Member must stop the entire PIXL Order (except if it is a Complex PIXL Order) at a price that is the better of: (i) The Reference BBO price improved by at least the Minimum Increment on the same side of the market as the PIXL Order, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO and the Reference BBO.[8]

The Exchange also proposes to add language to Rule 1080(n)(i) to clarify that, if any of the auction eligibility criteria are not met, the PIXL Order will be rejected. The Exchange will also add language to Rule 1080(n)(i) to clarify the treatment of paired public customer -to-public customer orders pursuant to Rule 1080(n)(vi) as a result of these proposed changes. Specifically, Exchange will allow a PIXL Order to trade on either the bid or offer, pursuant to Rule 1080(n)(vi), if the NBBO is $0.01 wide, provided (1) the execution price is equal to or within the NBBO, (2) there is no resting customer at the execution price, and (3) $0.01 is the Minimum Price Variation (MPV) of the option. The Exchange also proposes to add language that it will continue to reject a PIXL Order to buy (sell) if the NBBO is only $0.01 wide and the Agency order is stopped on the bid (offer) if there is a resting order on the bid (offer). These requirements are unchanged from the Exchange's current handling practices of paired public customer-to-public customer PIXL Orders per Rule 1080(n)(vi), and the Exchange's current practice of rejecting PIXL Orders to buy (sell) if the NBBO is only $0.01 wide and the Agency order is stopped on the bid (offer) if there is a resting order on the bid (offer).

The Exchange believes that these changes to PIXL may provide additional opportunities for PIXL Orders, other than Complex Orders, of under 50 option contracts to receive price improvement over the NBBO where the difference in the NBBO is $0.01 and therefore encourage the increased submission of orders of under 50 option contracts.[9] Phlx notes that the statistics for the current pilot, which include, among other things, price improvement for orders of less than 50 option contracts under the current auction eligibility requirements, show relatively small amounts of price improvement for such orders. Phlx believes that the proposed requirements will therefore increase the price improvement that orders of under 50 option contracts may receive in PIXL. The Exchange also notes that the initial PIXL requirements for auction eligibility differentiated between PIXL Orders for a size of less than 50 option contracts and PIXL Orders for a size of 50 contracts or more (both for PIXL Orders for the account of a public customer and for the account of a broker-dealer of any other person or entity that is not a public customer), with more stringent requirements for

[8] In implementing this change, the System will reject a PIXL Order to buy if the NBBO is only $0.01 wide and the agency order is stopped on the offer provided the order is not customer to customer. The system will reject a PIXL Order to sell if the NBBO is only $0.01 wide and the Agency order is stopped on the bid provided the order is not customer to customer. The system will allow a customer to customer PIXL Order to trade on either the bid or offer, if the NBBO is $0.01 wide, provided (1) the execution price is equal to or within the NBBO, (2) there is no resting customer at the execution price, and (3) $0.01 is the Minimum Price Variation (MPV) of the option. The system will continue to reject a PIXL Order to buy if the NBBO is only $0.01 wide and the Agency order is stopped on the bid if there is a resting order on the bid. The system will continue to reject a PIXL Order to sell if the NBBO is only $0.01 wide and the Agency order is stopped on the offer if there is resting order on the offer. The system will provide an explicit reject reason if the system rejects a PIXL Order because the NBBO is only $0.01 wide and the PIXL Order did not improve the contra side NBBO. The handling of Complex PIXL Orders will be unchanged regardless of the NBBO width.

[9] For the reasons discussed below, the Exchange is not proposing to modify the auction eligibility requirements for Complex Orders to require increased improvement.

PIXL Orders for a size of less than 50 option contracts.[10]

Auction Eligibility Requirements for Complex Orders

Rule 1080(n) sets forth separate auction eligibility requirements for Complex Orders. If the PIXL Order is a Complex Order and of a conforming ratio, as defined in Rule 1098(a)(i) and (a)(ix), the Initiating Member must stop the entire PIXL Order at a price that is better than the best net price (debit or credit) (i) available on the Complex Order book regardless of the Complex Order book size; and (ii) achievable from the best Phlx bids and offers for the individual options (an ''improved net price''), provided in either case that such price is equal to or better than the PIXL Order's limit price. Complex Orders consisting of a ratio other than a conforming ratio will not be accepted. This provision applies to all Complex Orders submitted into PIXL and, where applied to Complex Orders where the smallest leg is less than 50 contracts in size, is part of the current Pilot.

The Exchange is not proposing to modify the auction eligibility requirements for Complex Orders to require increased price improvement, as Rule 1080(n)(i)(C) already requires that the Initiating Member must stop the entire PIXL Order at a price that is better than the best net price (debit or credit) that is available on the Complex Order book regardless of the Complex Order book size; and that is achievable from the best Phlx bids and offers for the individual options, provided in either case that such price is equal to or better than the PIXL Order's limit price.

The Exchange is proposing, however, to make permanent the sub-paragraph concerning auction eligibility for Complex Orders in PIXL. Rule 1080(n)(i)(C) states that the auction eligibility requirements for a PIXL Order that is a Complex Order, where applied to Complex Orders where the smallest leg is less than 50 contracts in size, is part of the current Pilot.[11]

As noted above, when PIXL was initially proposed, the Exchange proposed auction eligibility requirements for simple PIXL Orders for a size of less than 50 contracts that were more stringent than the auction eligibility requirements for simple PIXL Orders for a size of 50 contracts or more. When initially proposed, the Exchange proposed to implement this size-based distinction on a pilot basis in order to ascertain the price improvement that small customer orders (*i.e.,* less than 50 contracts) would receive under the Pilot.[12] In approving different auction eligibility requirements for simple PIXL Orders of less than 50 contracts, the SEC noted that it was approving this provision on a pilot basis so that it could ascertain the level of price improvement attained for smaller-sized orders during the pilot period.[13] When expanding PIXL to include Complex Orders, the Exchange proposed implementing size-based auction eligibility requirements for Complex Orders in PIXL on a pilot basis accordingly. The SEC subsequently approved the elimination of the size-based distinction for auction eligibility for simple PIXL Orders, and permitted Phlx to adopt the auction eligibility standard that previously applied to orders of 50 contracts or greater.[14]

Phlx believes it is appropriate to approve this aspect of the Pilot on a permanent basis for two reasons. First, Phlx notes that the auction eligibility requirements for simple PIXL Orders are currently operating on a permanent basis.[15] Although the auction eligibility requirements for Complex PIXL Orders distinguish between Complex PIXL Orders where the smallest leg is less than 50 contracts and Complex PIXL Orders where the smallest leg is 50 contracts or greater, the substantive auction eligibility requirements for all Complex PIXL Orders are currently the same. To the extent that the SEC approved the simple PIXL Order auction eligibility requirements on a pilot basis, it was to determine if the different auction eligibility requirements for simple PIXL Orders of less than 50 contracts resulted in different levels of price improvement for those orders in comparison to simple PIXL Orders of 50 contracts or greater. Since no comparable distinction exists here, and since the auction eligibility requirements for Complex PIXL Orders where the smallest leg is 50 contracts or greater is already operating on a permanent basis, Phlx believes it is appropriate to approve, on a permanent basis, the same auction eligibility requirements for Complex PIXL Orders where the smallest leg is less than 50 contracts.

Second, the Exchange also believes that it is appropriate to approve this aspect of the Pilot on a permanent basis for Complex Orders where the smallest leg is less than 50 contracts in size because this will continue to provide such Orders with the opportunity to receive price improvement. Specifically, the Exchange believes that the auction eligibility requirements, which require a Complex Order to be stopped at a net debit/credit price that improves upon the stated markets present for the individual components of the Complex Order, ensure that at least one option leg will be executed at a better price than the established bid or offer for such leg. Moreover, as discussed in greater detail

[10] *See* PIXL Approval Order, *supra* note 3. Specifically, if the PIXL Order was for the account of a public customer and was for a size of 50 contracts or more, the Initiating Member must stop the entire PIXL Order at a price that is equal to or better than the NBBO on the opposite side of the market from the PIXL Order, provided that such price must be at least one minimum price improvement increment (as determined by the Exchange but not smaller than one cent) better than any limit order on the limit order book on the same side of the market as the PIXL Order. *See* PIXL Approval Order, *supra* note 3. In contrast, if the PIXL Order was for the account of a public customer and is for a size of less than 50 contracts, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) The PBBO price on the opposite side of the market from the PIXL Order improved by at least one minimum price improvement increment, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO, and at least one minimum price improvement increment better than any limit order on the book on the same side of the market as the PIXL Order. *Id.* The Exchange subsequently eliminated this size-based distinction for purposes of determining auction eligibility. *See* Securities Exchange Act Release No. 70654 (October 10, 2013), 78 FR 62891 (October 22, 2013) (Order approving SR–Phlx–2013–76). The auction eligibility requirements for orders of a size of less than 50 contracts, both for orders submitted for the account of a public customer and for orders submitted for the account of a broker-dealer or any other person or entity that is not a public customer, had been operating on a pilot basis, and were also eliminated accordingly. *Id.* In that order, the Commission noted that approving the elimination of the auction eligibility requirements for orders of under 50 option contracts did not affect the no minimum size pilot. *Id.*

[11] The Commission approved expanding PIXL to include Complex Orders in 2013, and approved this provision on a pilot basis. *See* Securities Exchange Act Release No. 69845 (June 25, 2013), 78 FR 39429 (July 1, 2013) (SR–Phlx–2013–46).

[12] *See* PIXL Approval Order, *supra* note 3. As initially approved, for public customer orders, if the simple PIXL Order was for 50 contracts or more, the Initiating Member must stop the entire PIXL Order at a price that is equal to or better than the National Best Bid/Offer (''NBBO'') on the opposite side of the market from the PIXL Order, provided that such price must be at least one minimum price improvement increment (as determined by the Exchange but not smaller than one cent) better than any limit order on the limit order book on the same side of the market as the PIXL Order. If the PIXL Order was for a size of less than 50 contracts, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) The PBBO price on the opposite side of the market from the PIXL Order improved by at least one minimum price improvement increment, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is better than the NBBO, and at least one minimum price improvement increment better than any limit order on the book on the same side of the market as the PIXL Order.

[13] *See* PIXL Approval Order, *supra* note 3.

[14] *See* Securities Exchange Act Release No. 70654 (October 10, 2013), 78 FR 62891 (October 22, 2013) (SR–Phlx–2013–76).

[15] *See* footnote 10 *supra.*

below, Phlx has gathered data throughout the Pilot that indicates that there is a robust market for simple orders, including small customer orders, both within and outside of PIXL, and significant opportunities for price improvement for small customer orders that are entered into PIXL. Phlx believes that the market for Complex Orders, including small customer orders, both within and outside of PIXL is similarly robust, and therefore believes it is appropriate to approve this aspect of the Pilot on a permanent basis.

No Minimum Size Requirement

Rule 1080(n)(vii) provides that, as part of the current Pilot, there will be no minimum size requirement for orders to be eligible for the Auction.[16] The Exchange proposed the no-minimum size requirement for PIXL auctions because it believed that this would provide small customer orders with the opportunity for price improvement. In initially approving PIXL, the Commission noted that it would evaluate the PIXL auction during the Pilot Period to determine whether it would be beneficial to customers and to the options market as a whole to approve any proposal requesting permanent approval to permit orders of fewer than 50 contracts to be submitted to the PIXL auction.[17]

The Exchange believes that the data gathered since the approval of the Pilot establishes that there is liquidity and competition both within PIXL and outside of PIXL, and that there are opportunities for significant price improvement within PIXL.[18] For simple PIXL Orders, in the period between January and June 2015, PIXL auctions executed 34.8 million contracts, which represents 11.4% of total PHLX contract volume. The average daily number of contracts traded on PIXL declined from 399,361 contracts per day in January 2015 to 187,062 contracts per day in June 2015. The percent of PHLX volume traded in PIXL auctions declined from 14.4% in January 2015 to 8.5% in June 2015. The percent of consolidated volume traded in PIXL auctions fell from 2.3% in January 2015 to 1.2% in June 2015.

For simple PIXL Orders, the mean number of unique participants in PIXL auctions was 4.0 and median was 3.0. The distribution of auctions and contracts traded by number of unique participants were similar, with a single participant in about 25% of auctions.

The Exchange has also gathered information about activity in orders for less than 50 contracts and 50 contracts or greater for simple PIXL auctions between January and June 2015. For auctions occurring during that period, 93% of auctions were for orders for less than 50 contracts, a percentage that increased slightly over that time period. Auctions for orders of less than 50 contracts accounted for 45.5% of the contract volume traded in PIXL. Auctions of 50 contracts or more made up 7.0% of all PIXL auctions and accounted for 54.5% of contracts traded in PIXL.

With respect to price improvement, 68.6% of PIXL auctions for simple PIXL Orders executed at a price that was better than the NBBO at the time the auction began. 69.2% of auctions for less than 50 contracts received price improvement. 56.3% of auctions for 50 contracts or more received price improvement. 66.5% of contracts in auctions for less than 50 contracts received price improvement. 55.7% of auctions for 50 contracts or more received price improvement. The equal-weighted average price improvement was 5.5% for auctions of less than 50 contracts and 4.9% for auctions of 50 contracts or more. Average price improvement was 5.6% when PBBO was at the NBBO and 3.4% when PBBO was not at the NBBO.

Phlx has also gathered data relating to the number of Complex Orders entered into PIXL. For November 2016, a total of 18,016 orders were entered into PIXL where the smallest leg was less than 50 contracts, representing 99, 941 contracts.[19] For November 2016, a total of 641 orders were entered into PIXL where the smallest leg was 50 contracts or greater, representing 52,686 contracts.

PHLX believes that the data gathered during the Pilot period indicates that there is meaningful competition in PIXL auctions for all size orders, there is an active and liquid market functioning on the Exchange outside of the auction mechanism, and that there are opportunities for significant price improvement for orders executed through PIXL. With respect to Complex Orders, the Exchange believes that this data establishes that there is liquidity and competition both within PIXL for Complex Orders and outside of PIXL for Complex Orders. The Exchange also believes that approving this aspect of the Pilot on a permanent basis would continue to permit the entry of small into PIXL, thereby continuing to provide such Orders with the opportunity for price improvement. The Exchange therefore believes that it appropriate to approve the no-minimum size requirement on a permanent basis for both simple and Complex PIXL Orders.

Early Conclusion of the PIXL Auction

Rule 1080(n)(ii)(B) provides that the PIXL Auction shall conclude at the earlier of (1) the end of the Auction period; (2) for a PIXL Auction (except if it is a Complex Order), any time the Reference BBO crosses the PIXL Order stop price on the same side of the market as the PIXL Order; (3) for a Complex Order PIXL Auction, any time the cPBBO[20] or the Complex Order book crosses the Complex PIXL Order stop price on the same side of the market as the Complex PIXL Order; or (4) any time there is a trading halt on the Exchange in the affected series.[21]

[16] The Rule also requires the Exchange to submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Any raw data which is submitted to the Commission will be provided on a confidential basis.

[17] *See* PIXL Approval Order, *supra* note 3.

[18] Specifically, the Exchange gathered and reported fifteen separate data fields relating to PIXL Orders of fewer than 50 contracts, including (1) the number of orders of fewer than 50 contracts entered into the PIXL Auction; (2) the percentage of all orders of fewer than 50 contracts sent to Phlx that are entered into the PIXL Auction; (3) the spread in the option, at the time an order of fewer than 50 contracts is submitted to the PIXL Auction; and (4) of PIXL trades where the PIXL Order is for the account of a public customer, and is for a size of fewer than 50 contracts, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc. The Exchange also gathered and reported multiple data fields relating to competition, including, for the first Wednesday of each month: (1) The total number of PIXL auctions on that date; (2) the number of PIXL auctions where the order submitted to the PIXL was fewer than 50 contracts; (3) the number of PIXL auctions where the order submitted to the PIXL was 50 contracts or greater; and (4) the number of PIXL auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant, 2 participants, etc. *See* PIXL Approval Order, *supra* note 3.

[19] In connection with this amendment, this November 2016 data for Complex Orders is being submitted as Exhibit 3b to the filing.

[20] Rule 1098(a) defines the cPBBO as ''the best net debit or credit price for a Complex Order Strategy based on the PBBO for the individual options components of such Complex Order Strategy, and, where the underlying security is a component of the Complex Order, the National Best Bid and/or Offer for the underlying security.'' *See* Rule 1098(a)(iv).

[21] If the situations described in either of the final three conditions occur, the entire PIXL Order will be executed at: (1) In the case of the Reference BBO crossing the PIXL Order stop price, the best response price(s) or, if the stop price is the best price in the Auction, at the stop price, unless the best response price is equal to or better than the price of a limit order resting on the PHLX book on the same side of the market as the PIXL Order, in which case the PIXL Order will be executed against that response, but at a price that is at least one minimum price improvement increment better than the price of such limit order at the time of the conclusion of the Auction; (2) in the case of the cPBBO or the Complex Order book crossing the Complex PIXL Order stop price on the same side

Continued

The last three conditions are operating as part of the current Pilot.

As with the no minimum size requirement, the Exchange has gathered data on these three conditions to assess the effect of early PIXL Auction conclusions on the Pilot.[22] Between January and June 2015, 320 auctions for simple PIXL Orders terminated early because the Phlx BBO crossed the PIXL Order stop price on the same side of the market. No auctions terminated early because of halts. The number of auctions that terminated early was 1/100th of 1% of all PIXL auctions over the period. The auctions that terminated early included 1/100th of 1% of contracts traded in PIXL auctions. The share of auctions that terminated early was stable between January and June 2015.

Between January and June 2015, 76.3% of PIXL auctions for simple PIXL Orders that terminated early executed at a price that was better than the NBBO at the time the auction began. 71.9% of contracts in auctions that terminated early received price improvement. The average amount of price improvement per contract for PIXL auctions that terminated early was 4.1%.

Based on the data gathered during the pilot, the Exchange does not anticipate that any of these conditions will occur with significant frequency, or will otherwise significantly affect the functioning of PIXL auctions. The Exchange also notes that over 75% of PIXL auctions for simple PIXL Orders that terminated early executed at a price that was better than the NBBO at the time the auction began, and over 70% of contracts in auctions that terminated early received price improvement. With respect to Complex PIXL Order, the Exchange similarly does not anticipate, based on the data gathered on this aspect of the Pilot for simple PIXL Orders, that either Rule 1080(n)(ii)(B)(3) or (4) will occur with significant frequency, or will otherwise significantly affect the functioning of Complex PIXL Order auctions. The Exchange therefore believes it is appropriate to approve this aspect of the Pilot on a permanent basis for both simple and Complex PIXL Orders.

Unrelated Market or Marketable Limit Order

Rule 1080(n)(ii)(D) provides that an unrelated market or marketable limit order (against the PBBO) on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction. In the case of a Complex PIXL Auction, an unrelated market or marketable limit Complex Order on the opposite side of the market from the Complex PIXL Order as well as orders for the individual components of the Complex Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction. If contracts remain from such unrelated order at the time the Auction ends, they will be considered for participation in the order allocation process described elsewhere in the Rule. This section is operating as part of the current Pilot.

In approving this feature on a pilot basis, the Commission found that ''allowing the PIXL auction to continue for the full auction period despite receipt of unrelated orders outside the Auction would allow the auction to run its full course and, in so doing, will provide a full opportunity for price improvement to the PIXL Order. Further, the unrelated order would be available to participate in the PIXL order allocation.'' [23] The Exchange believes that this rationale continues to apply for both simplex and Complex PIXL Orders. The Exchange also does not believe that this provision has had a significant impact on either the unrelated order or the PIXL auction process, either for simple or Complex PIXL Orders. The Exchange therefore believes it is appropriate to approve this aspect of the Pilot on a permanent basis for both simple and Complex PIXL Orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[24] in general and with Section 6(b)(5) of the Act,[25] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act [26] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that PIXL, including the rules to which the Pilot applies, results in increased liquidity available at improved prices, with competitive final pricing out of the Initiating Participant's complete control. The Exchange believes that PIXL promotes and fosters competition and affords the opportunity for price improvement to more options contracts. The Exchange believes that the changes to the PIXL Auction requiring price improvement of at least one minimum price improvement increment over the NBBO for PIXL Orders, other than Complex Orders, of less than 50 option contracts where the difference in the NBBO is $0.01 will provide further price improvement for those PIXL Orders, and thereby encourage additional submission of those orders into PIXL. The Exchange notes that statistics for the current pilot, which

of the market as the Complex PIXL Order, the stop price against executable PAN responses and executable Complex Orders using the allocation algorithm in sub-paragraph (E)(2)(d)(i) through (iv); or (3) in the case of a trading halt on the Exchange in the affected series, the stop price, in which case the PIXL Order will be executed solely against the Initiating Order. Any unexecuted PAN responses will be cancelled. *See* Rule 1080(n)(ii)(C).

[22] The Exchange agreed to gather and submit the following data on this part of the Pilot: (1) The number of times that the PBBO crossed the PIXL Order stop price on the same side of the market as the PIXL Order and prematurely ended the PIXL Auction, and at what time the PIXL Auction ended; (2) the number of times that a trading halt prematurely ended the PIXL auction and at what time the trading halt ended the PIXL Auction; (3) of the Auctions terminated early due to the PBBO crossing the PIXL order stop price, the number that resulted in price improvement over the PIXL Order stop price, and the average amount of price improvement provided to the PIXL Order; (4) in the Auctions terminated early due to the PBBO crossing the PIXL order stop price, the percentage of contracts that received price improvement over the PIXL order stop price; (5) of the Auctions terminated early due to a trading halt, the number that resulted in price improvement over the PIXL Order stop price, and the average amount of price improvement provided to the PIXL Order; (6) in the auctions terminated early due to a trading halt, the percentage of contracts that received price improvement over the PIXL order stop price; (7) the average amount of price improvement provided to the PIXL Order when the PIXL Auction is not terminated early (*i.e.,* runs the full one second); (8) the number of times an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order is received during the Auction Period; and (9) the price(s) at which an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order that is received during the Auction Period is executed, compared to the execution price of the PIXL Order. *See* PIXL Approval Order, *supra* note 3.

[23] *See* PIXL Approval Order, *supra* note 3.

[24] 15 U.S.C. 78f.

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f(b)(8).

include, among other things, price improvement for orders of less than 50 option contracts under the current auction eligibility requirements, show relatively small amounts of price improvement for such orders. Phlx believes that the proposed requirements will therefore increase the price improvement that orders of under 50 option contracts may receive in PIXL.

The Exchange believes that approving the Pilot on a permanent basis is also consistent with the Act. With respect to the auction eligibility for Complex Orders, Phlx believes that it is appropriate to approve these requirements when applied to Complex Orders where the smallest leg is less than 50 contracts in size on a permanent basis. Phlx notes that the auction eligibility requirements for simple PIXL Orders are currently operating on a permanent basis, and that the same auction eligibility requirements currently apply to Complex PIXL Orders where the smallest leg is 50 contracts or greater. Phlx believes that approving this aspect of the Pilot on a permanent basis will continue to provide such Orders with the opportunity to receive price improvement. Specifically, the Exchange believes that the auction eligibility requirements, which require a Complex Order to be stopped at a net debit/credit price that improves upon the stated markets present for the individual components of the Complex Order, ensures that at least one option leg will be executed at a better price than the established bid or offer for such leg. Phlx also believes that, as with the market for simple orders, the market for complex orders, including small customer orders, both within and outside of PIXL is similarly robust.

With respect to the no minimum size requirement, the Exchange believes that the data gathered during the Pilot period indicates that there is meaningful competition in PIXL auctions for all size orders in both simple and Complex PIXL Orders, there is an active and liquid market functioning on the Exchange outside of the auction mechanism, and that there are opportunities for significant price improvement for orders executed through PIXL, including for small customer orders. The Exchange also believes that approving this aspect of the Pilot on a permanent basis would continue to permit the entry of small simple and Complex Orders into PIXL, thereby continuing to provide such Orders with the opportunity for price improvement.

With respect to the early termination of a PIXL Auction, the Exchange believes that it is appropriate to terminate an auction any time the Reference BBO crosses the PIXL Order stop price on the same side of the market as the PIXL Order (and the related provision for a Complex Order PIXL Auction), or any time there is a trading halt on the Exchange in the affected series. Based on the data gathered during the pilot for simple PIXL Orders, the Exchange does not anticipate that any of these conditions will occur with significant frequency for either simple or Complex PIXL Orders, or will otherwise disrupt the functioning of PIXL auctions for simple or Complex PIXL Orders. The Exchange also notes that a significant percentage of PIXL auctions for simple PIXL Orders that terminated early executed at a price that was better than the NBBO at the time the auction began, and that a significant percentage of contracts in auctions that terminated early received price improvement.

With respect to the requirement that an unrelated market or marketable limit order (against the PBBO) on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction, and the corresponding provision for Complex Orders, the Exchange does not believe that these provisions have had a significant impact on either the unrelated order or the PIXL auction process for either simple or Complex PIXL Orders. The Exchange also believes that allowing the PIXL Auction to continue in this scenario, both for simple and Complex PIXL Orders, will allow the auction to run its full course and, in so doing, will provide a full opportunity for price improvement to the PIXL Order, in addition to affording the unrelated order the opportunity to participate in the PIXL order allocation.

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 proposal will apply to all Exchange members, and participation in the PIXL Auction process is completely voluntary. Based on the data collected by the Exchange during the Pilot, the Exchange believes that there is meaningful competition in PIXL auctions for all size orders, there are opportunities for significant price improvement for orders executed through PIXL, and that there is an active and liquid market functioning on the Exchange outside of PIXL. The Exchange believes that requiring increased price improvement for PIXL Orders may encourage competition by attracting additional orders to participate in PIXL. The Exchange believes that approving the Pilot on a permanent basis for both simple and Complex PIXL Orders will not significantly impact competition, as the Exchange is proposing no other change to the Pilot beyond implementing it on a permanent basis.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–Phlx–2016–119 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–119. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–119 and should be submitted on or before January 12, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30795 Filed 12–21–16; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79583; File No. SR-Phlx-2016–104]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Order Approving Proposed Rule Change To Amend Phlx Rule 748, Supervision

December 16, 2016.

I. Introduction

On October 14, 2016, NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend several provisions of Rule 748 in order to modernize, upgrade, and strengthen the Exchange's rules pertaining to supervisory obligations of its members and member organizations.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The proposed rule change was published for comment in the **Federal Register** on November 3, 2016.[3] The public comment period closed on November 25, 2016. The Commission received no comments in response to the Notice.

This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change [4]

Rule 748(a)

Rule 748(a) currently provides in the first paragraph that each office, location, department, or business activity of a member or member organization (including foreign incorporated branch offices) shall be under the supervision and control of the member or member organization establishing it and of an appropriately qualified supervisor. The Exchange is amending the first paragraph of Rule 748(a) to clarify and state clearly that each trading system and internal surveillance system of a member or member organization (including foreign incorporated branch offices) shall, inasmuch as they are aspects of their business activity, be under the supervision and control of the member or member organization establishing it and of an appropriately qualified supervisor.

Rule 748(b)

Rule 748(b), Designation of Supervisor by Member Organizations, currently provides in relevant part that the general partners or directors of each member organization shall provide for appropriate supervisory control and shall designate a general partner or principal executive officer to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities' (sic) laws and regulations, including the By-Laws and Rules of the Exchange. It provides that the designated person shall delegate to qualified principals or qualified employees responsibility and authority for supervision and control of each office, location, department, or business activity, (including foreign incorporated branch offices), and provide for appropriate written procedures of supervision and control. The Exchange proposes to amend Rule 748(b) to provide that the delegated person shall likewise delegate to qualified principals or qualified employees responsibility and authority for supervision and control of each trading system and internal surveillance system.[5]

Rule 748(c)

Rule 748(c) currently provides that each person with supervisory control, as described in paragraphs (a) and (b) of Rule 748, must meet the Exchange's qualification requirements for supervisors, including successful completion of the appropriate examination. The Exchange proposes to add to Rule 748(c) a new requirement that each member or member organization must make reasonable efforts to determine that each person with supervisory control, as described in paragraphs (a) and (b) of Rule 748, is qualified by virtue of experience or training to carry out his or her assigned responsibilities.

Rule 748(g)

Rule 748(g), Office Inspections, currently provides that each member or member organization for which the Exchange is the Designated Examining Authority shall inspect each office or location (including foreign incorporated branch offices) of the member or member organization according to a cycle that shall be established in its written supervisory procedures. In establishing such inspection cycle, the member or member organization shall give consideration to the nature and complexity of the securities activities for which the office or location is responsible, the volume of business done, and the number of registered representatives, employees, and associated persons at each office or location. Rule 748(g) is proposed to be amended to provide that an inspection may not be conducted by any person within that office or location who has supervisory responsibilities or by any individual who is directly or indirectly supervised by such person. The Exchange also proposes to add language requiring the examination schedule and an explanation of the factors considered in determining the frequency of the examinations in the cycle to be set forth in the member or member organization's written supervisory procedures. It also proposes to require that the inspection be reasonably designed to assist in preventing and detecting violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable Exchange rules.

[3] *See* Exchange Act Release No. 79185 (Oct. 28, 2016), 81 FR 76637 (Nov. 3, 2016) (File No. SR–Phlx–2016–104) (''Notice'').

[4] The subsequent description of the proposed rule change is substantially excerpted from the Exchange's description in the Notice.

[5] The Exchange also proposes to delete the extraneous apostrophe following the word ''securities.''

Rule 748(h)

Rule 748(h) in the first paragraph currently requires each member or member organization to establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, to supervise the types of business(es) in which the member or member organization engages and to supervise the activities of all registered representatives, employees, and associated persons. The written supervisory procedures and the system for applying such procedures shall reasonably be expected to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations, including the By-Laws and Rules of the Exchange. The Exchange proposes to substitute the word ''designed'' for the word ''expected.''

Rule 748(h) in the second paragraph currently requires that the written supervisory procedures set forth the supervisory system established by the member or member organization and include the name, title, registration status, and location of all supervisory personnel required by this rule, the dates for which supervisory designations were or are effective, and the responsibilities of supervisory personnel as these relate to the types of business(es) the member or member organization engages in, and securities laws and regulations, including the By-Laws and Rules of the Exchange. The Exchange proposes to add a requirement that this record be preserved for a period of not less than three years, the first two in an easily accessible place.

Rule 748(h) in the third paragraph currently requires a copy of the written supervisory procedures to be kept and maintained at each location where supervisory activities are conducted on behalf of the member or member organization. It requires each member or member organization to amend its written supervisory procedures as appropriate within a reasonable time after changes occur in supervisory personnel or supervisory procedures, and to communicate such changes throughout its organization within a reasonable time. The Exchange proposes to amend Rule 748(h) to likewise amend and communicate changes to its written supervisory procedures as appropriate within a reasonable time after changes occur in applicable securities laws and regulations and Exchange rules.

III. Comment Summary

As noted above, the Commission received no comments on the proposed rule change.

IV. Discussion and Commission Findings

The Commission has carefully considered the proposal. Based on its review of the record, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities exchange.[6] Specifically, the Commission finds that the rule change is consistent with Section 6(b)(5) of the Exchange Act,[7] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

As stated in the Notice, the Exchange believes that ''[r]equiring increased comprehensive supervision by members and member organizations of their activities should promote the Exchange's ability to enforce compliance by members and member organizations with the [Exchange] Act and the regulations thereunder.'' [8] With respect to the proposed amendments of Rule 748(a) and (b), the Exchange believes that these amendments ''should protect investors and the public interest by specifically requiring supervision and control'' of trading systems and internal surveillance systems to be supervised and controlled by ''an appropriately qualified individual.'' [9] The Exchange believes that the proposed amendments to Rule 748(c) ''should protect investors and the public interest by requiring that each person with supervisory control as described in Rules 748(a) and (b) to be qualified by virtue of experience or training to carry out his or her assigned responsibilities, such that the individual has the actual capacity to fulfill those responsibilities.'' [10]

Further, the Exchange believes that the proposed amendments to Rule 748(g) will ''minimiz[e] the potential for conflicts of interest in the conduct of office inspections'' by prohibiting those inspections ''from being conducted by any person within that office or location who has supervisory responsibilities or by any individual who is directly or indirectly supervised by such a person who may be incentivized to minimize any compliance issues identified in the inspection.'' [11] The Exchange also believes ''[t]he proposed amendments to Rule 748(g) concerning the examination schedule and specifically requiring that the inspection be reasonably designed to assist in preventing and detecting violations of, and achieving compliance with, applicable securities laws and regulations and with applicable Exchange rules should assure that inspections take place with a predictable and adequate frequency and are reasonably designed to identify violations of applicable law and rules.'' [12]

The Exchange believes that the proposed amendments to Rule 748(h), which address the design and maintenance of written supervisory procedures, will ''facilitate identification of instances where the procedures were not followed'' and also ''clarif[y] the affirmative nature of the member or member organization's obligations under the rule when creating such procedures.'' [13] Finally, the Exchange believes that the proposed amendment to Rule 748(h) with respect to updating written supervisory procedures ''should promote the continued usefulness of the procedures in the context of ongoing changes in the regulatory environment in which members and member organizations conduct their business.'' [14]

The Commission notes that the proposal received no comments from the public. Taking into consideration the Exchange's views about the proposed amendments, the Commission believes that the proposal will help protect investors and the public interest by strengthening and clarifying the supervisory obligations of Exchange members and member organizations. The Commission believes that the approach proposed by the Exchange is appropriate and designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act. For these reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) [15] of the Exchange Act,[16] that the proposed rule change

[6] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] Notice at 76638.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 76638–39.

[12] *Id.* at 76639.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] 15 U.S.C. 78s(b)(2).

(SR–Phlx–2016–104) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30794 Filed 12–21–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79585; File Nos. SR–BatsBZX–2016–68; SR–BatsBYX–2016–29; SR–BatsEDGA–2016–24; SR–BatsEDGX–2016–60]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Bats BYX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; Order Granting Approval of Proposed Rule Change in Connection With the Proposed Corporate Transaction Involving Bats Global Markets, Inc. and CBOE Holdings, Inc.

December 16, 2016.

I. Introduction

On November 2, 2016, Bats BZX Exchange, Inc. (''BZX''), Bats BYX Exchange, Inc. (''BYX'' and, together with BZX, the ''Bats Exchanges''), Bats EDGA Exchange, Inc. (''EDGA'') and Bats EDGX Exchange, Inc. (''EDGX'' and, together with EDGA, the ''Edge Exchanges'') (the Bats Exchanges and the Edge Exchanges are the ''Exchanges'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] proposed rule changes in connection with the proposed corporate transaction (the ''Transaction''), as described in more detail below, involving their ultimate parent company, Bats Global Markets, Inc. (''BGM''), CBOE Holdings, Inc. (''CBOE Holdings''), and two wholly owned subsidiaries of CBOE Holdings, CBOE Corporation and CBOE V, LLC (''CBOE V''). CBOE Holdings is the parent company of Chicago Board Options Exchange, Incorporated (''CBOE'') and C2 Options Exchange, Incorporated (''C2''), each a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act,[4] and CBOE Futures Exchange, LLC (''CBOE Futures,'' and together with CBOE and C2, the ''CBOE Exchanges''), a national securities exchange that lists or trades security-futures products notice-registered with the Commission pursuant to Section 6(g) of the Act.[5] The proposed rule changes were published for comment in the **Federal Register** on November 15, 2016.[6] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule changes are consistent with Sections 6(b)(1) and (3) of the Act,[8] which, among other things, require a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act, and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission also finds that the proposal is consistent with Section 6(b)(5) of the Act,[9] which requires that the rules of the exchange be 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.

II. Discussion

A. Corporate Structure

1. Current Structure

The Exchanges are each Delaware corporations that are national securities exchanges registered with the Commission pursuant to Section 6(a) of the Act.[10]

BZX and BYX are each direct, wholly owned subsidiaries of Bats Global Market Holdings, Inc. (''BGM Holdings''), a Delaware corporation that is a direct, wholly owned subsidiary of BGM. BGM Holdings also owns 100 percent of the equity interest in Bats Trading, Inc. (''Bats Trading''), a Delaware corporation that is a broker-dealer registered with the Commission that provides routing services outbound from, and in certain instances inbound to, each Exchange. EDGX and EDGA are direct, wholly owned subsidiaries of Direct Edge LLC (''Direct Edge''), a Delaware limited liability company that is a direct, wholly owned subsidiary of BGM. BGM, a Delaware corporation, is a publicly traded company listed on BZX.

CBOE Holdings, a Delaware corporation, is a publicly traded company listed on The NASDAQ Stock Market. CBOE Holdings owns 100 percent of the equity interest in the CBOE Exchanges.

2. The Transaction

In contemplation of the Transaction, CBOE Holdings formed two additional entities, CBOE Corporation, a Delaware corporation, and CBOE V, a Delaware limited liability company, each of which are direct, wholly owned subsidiaries of CBOE Holdings. Neither CBOE Corporation nor CBOE V currently have material assets or conduct any operations.

On September 25, 2016, BGM, CBOE Holdings, CBOE Corporation and CBOE V entered into an Agreement and Plan of Merger (the ''Merger Agreement''). Pursuant to and subject to the terms of the Merger Agreement, upon completion of the mergers described below that effectuate the Transaction (the ''Closing''), among other things:

(i) CBOE Corporation will be merged with and into BGM, whereupon the separate existence of CBOE Corporation will cease and BGM will be the surviving company (the ''Merger'');

(ii) by virtue of the Merger and without any action required on the part of BGM, CBOE Corporation or any holder of BGM or CBOE Corporation stock, each share of BGM common stock (whether voting or non-voting) issued and outstanding (with the exception of shares owned by CBOE Holdings, BGM or any of their respective subsidiaries and certain shares held by persons that are entitled to and properly demand appraisal rights) will be converted into

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78f(a).

[5] 15 U.S.C. 78f(g).

[6] *See* Securities Exchange Act Release Nos. 79266 (November 8, 2016), 81 FR 80101 (November 15, 2016) (SR–BatsBZX–2016–68); 79269 (November 8, 2016), 81 FR 80093 (November 15, 2016) (SR–BatsBYX–2016–29); 79265 (November 8, 2016), 81 FR 80146 (November 15, 2016) (SR–BatsEDGA–2016–24) and 79264 (November 8, 2016), 81 FR 80114 (November 15, 2016) (SR–BatsEDGX–2016–60) (''Notices'').

[7] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(1) and (b)(3).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(a).

the right to receive a particular number of shares of CBOE Holdings and/or cash, at the election of the holder of such share of BGM common stock (the ''Merger Consideration''), and each share of CBOE Corporation issued and outstanding will be converted into one share of BGM, such that BGM will become a wholly owned subsidiary of CBOE Holdings; and

(iii) immediately following the Merger, BGM will be merged with and into CBOE V, whereupon the separate existence of BGM will cease and CBOE V will be the surviving company (the ''Subsequent Merger'').

As a result of the Transaction, BGM will cease to exist and the business of BGM will be carried on by CBOE V, which is a wholly owned subsidiary of CBOE Holdings.[11] CBOE V will own 100 percent of the equity interest in BGM Holdings and Direct Edge. BGM Holdings will continue to own 100 percent of the equity interest in the Bats Exchanges and Bats Trading. Direct Edge will continue to own 100 percent of the equity interest in the Edge Exchanges.

B. Proposed Rule Changes

Section 19(b) of the Act and Rule 19b–4 thereunder require a self-regulatory organization (''SRO'') to file proposed rule changes with the Commission. Although BGM, BGM Holdings, Direct Edge, CBOE Holdings, and CBOE V are not SROs, certain provisions of their proposed certificates of incorporation and bylaws, along with other corporate documents, are rules of the exchange, if they are stated policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b–4 thereunder. Accordingly, each of the Exchanges filed with the Commission the following documents, along with other corporate documents, in connection with the Transaction: (1) The resolutions of BGM's board of directors (the ''BGM Board'') waiving certain provisions of the Amended and Restated Certificate of Incorporation of BGM (the ''BGM Charter'') and making certain related determinations regarding CBOE Holdings and the impact of the Transaction on the Exchanges (the ''Resolutions''); (2) the CBOE Holdings Second Amended and Restated Certificate of Incorporation (the ''CBOE Holdings Charter'') and the CBOE Holdings Third Amended and Restated Bylaws (the ''CBOE Holdings Bylaws''); (3) the Certificate of Formation of CBOE V (the ''CBOE V Certificate'') and the Limited Liability Company Operating Agreement of CBOE V (the ''CBOE V Operating Agreement''); (4) the proposed amendments to the Amended and Restated Certificate of Incorporation of BGM Holdings (the ''BGM Holdings Charter''), in the case of the Bats Exchanges; (5) the proposed amendments to the Amended and Restated Limited Liability Company Operating Agreement of Direct Edge (the ''Direct Edge Operating Agreement''), in the case of the Edge exchanges; (6) the proposed amendments to the Fourth Amended and Restated Bylaws of the Bats Exchanges (each, and collectively, the ''Bats Exchange Bylaws''), in the case of the Bats Exchanges; (7) the proposed amendments to the Fifth Amended and Restated Bylaws of the Edge Exchanges (each, and collectively, the ''Edge Exchange Bylaws''), in the case of the Edge Exchanges; and (8) the proposed amendments to various of its rules.[12]

1. Voting and Ownership Limitations

In connection with the Transaction, upon the Closing, CBOE Holdings will become the indirect owner (through CBOE V and Direct Edge) of EDGA and EDGX and the indirect owner (through CBOE V and BGM Holdings) of BZX, BYX and Bats Trading. The CBOE Holdings Charter includes restrictions on the ability to own and vote shares of capital stock of CBOE Holdings.[13] These limitations are designed to prevent any stockholder from exercising undue control over the operation of any of the Exchanges and to assure that the Exchanges and the Commission are able to carry out their regulatory obligations under the Act.

Specifically, the CBOE Holdings Charter includes restrictions on the ability to vote and own shares of stock of CBOE Holdings. Under the CBOE Holdings Charter: (1) No Person,[14] either alone or together with its Related Persons,[15] as of any record date for the determination of stockholders entitled to vote on any matter, shall be entitled to vote or cause the voting of shares of stock of CBOE Holdings, beneficially owned directly or indirectly by such Person or its Related Persons, in person or by proxy or through any voting agreement or other arrangement, to the

[11] The Commission notes that the Exchanges represented that, in connection with the Transaction, CBOE Holdings agreed in the Merger Agreement to take all requisite actions so, as of the Closing, the CBOE Holdings Board will include three individuals designated by BGM who (1) are serving as BGM directors immediately prior to the Closing and (2) comply with the policies (including clarifications of the policies provided to BGM) of the Nominating and Governance Committee of the CBOE Holdings Board as in effect on the date of the Merger Agreement and previously provided to BGM (each of whom will be appointed to the CBOE Holdings Board as of the Closing). The CBOE Holdings Board currently consists of 14 directors. The Exchanges expect three current CBOE Holdings directors to resign effective prior to the Closing and the remaining CBOE Holdings directors to fill those vacancies with the three BGM directors designated by BGM. *See* Notices, *supra* note 6, at 80102 n. 6, 80094 n. 6, 80147 n. 6, and 80116 n. 6. *See also* Securities Exchange Act Release Nos. 79267 (November 8, 2016), 81 FR 80132 (November 15, 2016) (SR–C2–2016–022) and 79268 (November 8, 2016), 81 FR 80157 (November 15, 2016) (SR–CBOE–2016–076) (notice of filing of proposed rule changes related to the composition of the CBOE Holdings Board).

[12] The Bats Exchanges each proposed to amend Rules 2.3 and 2.10 in their respective rulebooks. *See* Notices, *supra* note 6, at 80107 and 80099. The Edge Exchanges each proposed to amend Rules 2.3, 2.10, and 2.12 in their respective rulebooks. *See* Notices, *supra* note 6, at 80152 and 80120–21.

[13] These provisions are generally consistent with ownership and voting limits approved by the Commission for other SROs. *See e.g.,* Securities Exchange Act Release Nos. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR–ISE–2016–11, SR–ISE Gemini–2016–05, SR–ISE Mercury–2016–10) (order approving proposed transaction in which Nasdaq, Inc. will become the indirect parent of ISE, ISE Gemini and ISE Mercury) (''Nasdaq–ISE Order''); 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGA–2013–34; SR–EDGX–2013–43) (order approving proposed business combination involving BATS Global Markets, Inc. and Direct Edge Holdings LLC); 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059, SR–BYX–2013–039) (order approving proposed business combination involving BATS Global Markets, Inc. and Direct Edge Holdings LLC); 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE–2013–42, SR–NYSEMKT–2013–50 and SR–NYSEArca–2013–62) (order approving proposed transaction in which NYSE Euronext will become a wholly owned subsidiary of IntercontinentalExchange Group, Inc.) (''IntercontinentalExchange Group, Inc. Combination Order''); 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order approving registration application of BYX as a national securities exchange) (''BYX Approval Order''); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order approving registration application of EDGX Exchange, Inc. and EDGA Exchange, Inc.) (''EDGX and EDGA Approval Order''); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order approving registration of BATS as a national securities exchange) (''BATS Approval Order''); 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120) (order approving proposed combination between NYSE Group, Inc. and Euronext N.V.) (''NYSE-Euronext Merger Order''); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving merger of New York Stock Exchange, Inc. and Archipelago, and demutualization of New York Stock Exchange, Inc.) (''NYSE Inc.-Archipelago Merger Order''); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (File No. SR–NSX–2006–03) (''NSX Demutualization Order''); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (order approving registration application of NASDAQ as a national securities exchange) (''NASDAQ Approval Order''); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR–CHX–2004–26) (''CHX Demutualization Order''); and 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR–Phlx–2003–73) (''Phlx Demutualization Order'').

[14] *See* CBOE Holdings Charter, Article FIFTH, para. (a)(iv) (defining ''Person'').

[15] *See id.* at Article FIFTH, para. (a)(vi) (defining ''Related Person'').

extent that such shares represent in the aggregate more than 20 percent of the then outstanding votes entitled to be cast on such matter,[16] and (2) no Person, either alone or together with its Related Persons, shall be party to any agreement, plan or other arrangement relating to shares of stock of CBOE Holdings entitled to vote on any matter with any other Person, either alone or together with its Related Persons, under circumstances that would result in shares of stock of CBOE Holdings that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any Person with the right to vote any shares of stock of CBOE Holdings, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of stock of CBOE Holdings that would exceed 20% of the then outstanding votes entitled to be cast on such matter (''CBOE Holdings Voting Restrictions'').[17]

In addition, the CBOE Holdings Charter includes ownership restrictions that provide that no Person, either alone or together with its Related Persons, shall be permitted at any time to beneficially own directly or indirectly shares of stock of CBOE Holdings representing in the aggregate more than 20 percent of the then outstanding shares of stock of CBOE Holdings (''CBOE Holdings Ownership Restrictions'').[18]

If any Person, either alone or together with its Related Persons, at any time beneficially owns shares of stock of CBOE Holdings in excess of the CBOE Holdings Ownership Restrictions, CBOE Holdings shall be obligated to redeem promptly, at a price equal to the par value of such shares of stock and to the extent funds are legally available therefor, that number of shares of stock of CBOE Holdings necessary so that such Person, together with its Related Persons, shall beneficially own directly or indirectly shares of stock of CBOE Holdings representing in the aggregate no more than 20 percent of the then outstanding shares of CBOE Holdings, after taking into account that such redeemed shares shall become treasury shares and shall no longer be deemed to be outstanding.[19]

The CBOE Holdings board of directors may waive the CBOE Holdings Ownership Restrictions and the CBOE Holdings Voting Restrictions, if, in connection with taking such action, the board of directors adopts a resolution stating that the waiver:

- Will not impair the ability of any Regulated Securities Exchange Subsidiary to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of the Corporation, its stockholders and the Regulated Securities Exchange Subsidiaries;
- neither such Person nor any of its Related Persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act);
- will not impair the Commission's ability to enforce the Act or the rules and regulations promulgated thereunder; and
- for so long as the Corporation directly or indirectly controls any Regulated Securities Exchange Subsidiary, neither such Person nor any of its Related Persons is a Trading Permit Holder.[20]

Any such waiver would not be effective until approved by the Commission pursuant to Section 19 of the Act.[21] Furthermore, such Person seeking the waiver must deliver to CBOE Holdings not less than 45 days prior to any vote or acquisition, as appropriate, a notice of the intent to exceed the CBOE Holdings Ownership Restrictions or the CBOE Holdings Voting Restrictions, as appropriate.[22]

Members that trade on an exchange traditionally have had ownership interests in such exchange. As the Commission has noted in the past, however, a member's interest in an exchange could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.[23] A member that is a controlling shareholder of an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and surveil the member's conduct or diligently enforce its rules and the federal securities laws with respect to conduct by the member that violates such provisions.[24]

In addition, as proposed, CBOE V will be a wholly-owned subsidiary of CBOE Holdings and the CBOE V Operating Agreement identifies this ownership structure.[25] Any changes to the CBOE V Operating Agreement, including any change in the provision that identifies CBOE Holdings as the sole member of CBOE V, must be filed with and approved by the Commission pursuant to Section 19 of the Act.[26] Similarly, as proposed, BGM Holdings and Direct Edge will each be wholly-owned subsidiaries of CBOE V. The proposed amendments to the BGM Holdings Charter and the Direct Edge Operating Agreement identify this ownership structure.[27] Any changes to the BGM Holdings Charter and the Direct Edge Operating Agreement, including any change in the provision that identifies CBOE V as the sole stockholder of BGM Holdings and the sole member of Direct Edge, must be filed with and approved by the Commission pursuant to Section 19 of the Act.[28]

Furthermore, each of the Bats Exchanges will continue to be a wholly-owned subsidiary of BGM Holdings and the Bats Exchange Bylaws identify this ownership structure.[29] Any changes to the Bats Exchange Bylaws, including any change in the provision that identifies BGM Holdings as the sole stockholder of each Bats Exchange, must be filed with and approved by the Commission pursuant to Section 19 of the Act.[30] Further, pursuant to the Bats Exchanges' Bylaws, BGM Holdings may not transfer or assign, in whole or in part, its ownership interest in each Bats

[16] *See id.* at Article SIXTH, para. (a).

[17] *See id.*

[18] *See id.* at Article SIXTH, para. (b).

[19] *See id.* at Article SIXTH para (b)(iii).

[20] *See id.* at Article SIXTH para. (a)(ii) and (b)(ii)(B). In making this determination, the CBOE Holdings board of directors may impose on the Person and its Related Persons such conditions and restrictions that it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act and the governance of CBOE Holdings. *Id.* Because the Exchanges admit members rather than issue ''trading permits,'' each Exchange proposed to amend the Exchange's Bylaws to add clause (ff) to Article I to provide that ''Trading Permit Holder'' shall have the same meaning as member. As such, the board of directors of CBOE Holdings would now be prohibited from waiving the CBOE Holdings Ownership or Voting Restrictions for a Person if it or any of its Related Persons is a member of one of the Exchanges. *See* Notices, *supra* note 6, at 80106–07, 80098, 80151–52, and 80120.

[21] *See* CBOE Holdings Charter, Article SIXTH, para. (a)(i)(C) and (b)(i).

[22] *See id.* at Article SIXTH para. (a)(i)(A) and (b)(i).

[23] *See, e.g.,* Nasdaq-ISE Order; IntercontinentalExchange Group, Inc. Combination Order; BYX Approval Order; EDGX and EDGA Approval Order; BATS Approval Order; NYSE-Euronext Merger Order; NYSE Inc.-Archipelago Merger Order; NSX Demutualization Order; NASDAQ Approval Order; CHX Demutualization Order; Phlx Demutualization Order, *supra* note 12.

[24] *See, e.g., id.*

[25] *See* proposed CBOE V Operating Agreement, Article I, para. 1.1.

[26] *See id.* at Article V, para. 5.2; 15 U.S.C. 78s(b).

[27] *See* proposed BGM Holdings Charter, Article SEVENTH, para. 4; proposed Direct Edge Operating Agreement, Article II, Section 2.01.

[28] *See* BGM Holdings Charter, Article SEVENTH, para. 3., Direct Edge Operating Agreement, Article II, Section 2.05, and 15 U.S.C. 78s(b).

[29] *See* Bats Exchange Bylaws, Article I(cc).

[30] *See* 15 U.S.C. 78s(b).

Exchange.[31] Similarly, each of the Edge Exchanges will continue to be a wholly-owned subsidiary of Direct Edge and the Edge Exchange Bylaws identify this ownership structure.[32] Any changes to the Edge Exchange Bylaws, including any change in the provision that identifies Direct Edge as the sole stockholder of each Edge Exchange, must be filed with and approved by the Commission pursuant to Section 19 of the Act.[33] Further, pursuant to the Edge Exchange Bylaws, Direct Edge may not transfer or assign, in whole or in part, its ownership interest in each Edge Exchange.[34]

The Commission believes that these provisions are consistent with the Act. These requirements should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchanges to effectively carry out their regulatory oversight responsibilities under the Act.

2. Jurisdiction; Books and Records; Due Regard

As described above, following the Closing, CBOE Holdings will be the sole member of CBOE V, CBOE V will be the sole stockholder of BGM Holdings and the sole member of Direct Edge, and BGM Holdings and Direct Edge will be the sole stockholders of the Bats Exchanges and the Edge Exchanges respectively. Although CBOE Holdings, CBOE V, BGM Holdings, and Direct Edge will not carry out any regulatory functions, their activities with respect to the operation of the Exchanges must be consistent with, and must not interfere with, the self-regulatory obligations of each Exchange. The CBOE Holdings Charter, CBOE Holdings Bylaws, CBOE V Operating Agreement, BGM Holdings Charter, BGM Holdings Bylaws, and Direct Edge Operating Agreement therefore include certain provisions that are designed to maintain the independence of the Exchanges'[35] self-regulatory functions, enable the Exchanges to operate in a manner that complies with the federal securities laws, including the objectives of Sections 6(b)''[36] and 19(g)[37] of the Act, and facilitate the ability of the Exchanges and the Commission to fulfill their regulatory and oversight obligations under the Act.[38]

For example, under the CBOE Holdings Charter and the CBOE V Operating Agreement, for so long as CBOE Holdings or CBOE V, as the case may be, directly or indirectly, controls any of the Exchanges, the board of directors (or sole member in the case of CBOE V), officers, employees and agents of each of CBOE Holdings and CBOE V, must give due regard to the preservation of the independence of the self-regulatory functions of each of the Exchanges, as well as to its obligations to investors and the general public and shall not take any actions that would interfere with the effectuation of any decisions by a board of directors of one of the Exchanges relating to its regulatory functions (including disciplinary matters), or which would interfere with the ability of such Exchange to carry out its responsibilities under the Act.[39]

The CBOE Holdings Charter and the CBOE V Operating Agreement would further require that CBOE Holdings or CBOE V, as the case may be, comply with the U.S. federal securities laws and rules and regulations thereunder and shall cooperate with the Commission and each of the Exchanges, pursuant to and to the extent of their respective regulatory authority.[40] In addition, the CBOE Holdings Charter and the CBOE V Operating Agreement, provide that the officers, directors, employees and agents of CBOE Holdings and CBOE V, as the case may be, by virtue of the acceptance of their position, shall be deemed to agree to: (1) comply with the U.S. federal securities laws and the rules and regulations thereunder; and (2) to cooperate with the Commission and the Exchanges in respect of the Commission's oversight responsibilities regarding the Exchanges and the self-regulatory functions and responsibilities of the Exchanges, and CBOE Holdings and CBOE V will take reasonable steps to cause its officers, directors, employees and agents to so cooperate.[41] Furthermore, CBOE Holdings, CBOE V and their respective officers, directors, employees and agents will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and each Exchange, as applicable, for purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws or the rules or regulations thereunder arising out of, or relating to, the activities of such exchange.[42]

The CBOE Holdings Charter and the CBOE V Operating Agreement provide that CBOE Holdings, CBOE V and their respective officers, directors, employees and agents must submit to the Commission's jurisdiction with respect to activities relating to any of the Exchanges,[43] and, for so long as CBOE Holdings or CBOE V controls, directly or indirectly, such Exchange, CBOE Holdings and CBOE V agree to provide the Commission and each Exchange with access to its books and records that are related to the operation or administration of each Exchange.[44] In addition, to the extent they are related to the operation or administration of the Exchanges, the books, records, premises, officers, directors (in the case of CBOE Holdings), agents, and employees of CBOE Holdings and CBOE V shall be deemed to be the books, records, premises, officers, directors (in the case of CBOE Holdings), agents, and employees of the respective Exchange for purposes of, and subject to oversight pursuant to, the Act.[45]

The CBOE Holdings Charter and CBOE V Operating Agreement also provide that all books and records of each Exchange reflecting confidential information pertaining to the self-regulatory function of the Exchanges (including but not limited to disciplinary matters, trading data, trading practices and audit information) that shall come into the possession of CBOE Holdings or CBOE V, as the case may be, shall not be made available other than to those officers, directors (or sole member in the case of CBOE V), employees and agents of CBOE Holdings or CBOE V, as the case may be, that have a reasonable need to know the contents thereof, and shall be retained

[31] *See* Bats Exchange Bylaws, Article IV, Section 7.

[32] *See* Edge Exchange Bylaws, Article I(cc).

[33] *See* 15 U.S.C. 78s(b).

[34] *See* Edge Exchange Bylaws, Article IV, Section 7.

[35] The provisions in the CBOE Holdings Charter apply to ''Regulated Securities Exchange Subsidiary,'' which is defined as a national securities exchange controlled directly, or indirectly, by CBOE Holdings. The provisions in the CBOE V Operating Agreement apply to ''Exchange Subsidiaries,'' which is defined as any direct or indirect subsidiary of CBOE V that is registered with the Commission as a national securities exchange as provided in Section 6 of the Act. The Exchanges will be Regulated Securities Exchange Subsidiaries and Exchange Subsidiaries upon the Closing.

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78s(g).

[38] *See, e.g.,* CBOE Holdings Charter Article FOURTEENTH and proposed CBOE V Operating Agreement, Article VIII, Section 8.4.

[39] *See* CBOE Holdings Charter, Article SIXTEENTH, para. (c) and proposed CBOE V Operating Agreement, Article X, Section 10.1(a).

[40] *See* CBOE Holdings Charter, Article SIXTEENTH, para. (d) and proposed CBOE V Operating Agreement, Article X, Section 10.2(a).

[41] *See* CBOE Holdings Charter, Article SIXTEENTH, para. (a) and proposed CBOE V Operating Agreement, Article X, Section 10.2(a).

[42] *See* CBOE Holdings Charter, Article FOURTEENTH and proposed CBOE V Operating Agreement, Article X, Section 10.3.

[43] *See id.*

[44] *See* CBOE Holdings Charter, Article FIFTEENTH and proposed CBOE V Operating Agreement, Article VIII, Section 8.4(b).

[45] *Id.*

in confidence by CBOE Holdings or CBOE V, the members of the board of directors or the sole member, respectively, its officers, employees and agents, and not used for any non-regulatory purposes.[46] The CBOE Holdings Charter and CBOE V Operating Agreement, however, specify that the CBOE Holdings Charter and CBOE V Operating Agreement (including these confidentiality provisions) shall not be interpreted so as to limit or impede the rights of the Commission or the Exchanges to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors (or sole member in the case of CBOE V), employees or agents of CBOE Holdings or CBOE V, as the case may be, to disclose such confidential information to the Commission or the Exchanges.[47]

The CBOE Holdings Charter, CBOE Holdings Bylaws and the CBOE V Operating Agreement provide that, for so long as CBOE Holdings or CBOE V, as the case may be, controls, directly or indirectly, a registered national securities exchange, before any amendment to, or repeal of, any provision of the proposed CBOE Holdings Charter, CBOE Holdings Bylaws or the CBOE V Operating Agreement, as the case may be, may be effective, those changes must be submitted to the board of directors of each of the Exchanges, and if the amendment is required to be filed with, or filed with and approved by the Commission pursuant to Section 19(b) of the Act,[48] such change shall not be effective until filed with, or filed with and approved by, the Commission.[49]

The Commission finds that these provisions are consistent with the Act, and that they are intended to assist each Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act. The Commission also notes that, even in the absence of these provisions, under Section 20(a) of the Act,[50] any person with a controlling interest in any of the Exchanges shall be jointly and severally liable with and to the same extent that each Exchange is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act[51] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act[52] authorizes the Commission to enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation.

3. Change in Control

Upon the Closing, BGM will cease to exist and the business of BGM will be carried on by CBOE V which will be a wholly owned subsidiary of CBOE Holdings. The BGM Charter includes certain restrictions on the ability to vote and own shares of stock of BGM. Specifically, the BGM Charter provides that: (1) No Person,[53] either alone or together with its Related Persons,[54] may own, directly or indirectly, of record or beneficially, shares constituting more than 40 percent of any class of its capital stock, and no Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than 20 percent of any class of its capital stock (''BGM Ownership Limitation''), and (2) subject to certain exceptions, no Person, either alone or together with its Related Persons, at any time, may, directly, indirectly or pursuant to any of various arrangements, vote or cause the voting of shares or give any consent or proxy with respect to shares representing more than 20 percent of the voting power of its then issued and outstanding capital stock (''BGM Voting Limitation'').[55]

The BGM Charter also provides that the BGM Ownership Limitation and the BGM Voting Limitation may be waived (except with respect to Members and their Related Persons) pursuant to a resolution duly adopted by the board of directors of BGM if, in connection with taking such action, the board of directors states in such resolution that it is the determination of the board of directors that the waiver: (1) Will not impair the ability of each Exchange to carry out its functions and responsibilities as an ''exchange'' under the Act and the rules and regulations promulgated thereunder; (2) is otherwise in the best interests of BGM, its stockholders, and the Exchanges; (3) will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder; and (4) shall not be effective until it is filed with and approved by the Commission.[56]

As described above, as a result of the Merger (and prior to its separate existence ceasing as a result of the Subsequent Merger), BGM will become a wholly owned subsidiary of CBOE Holdings, such that CBOE Holdings will possess ownership and voting rights in BGM in excess of the BGM Ownership Limitation and the BGM Voting Limitation. As a result of the Subsequent Merger, BGM will merge with and into CBOE V, terminating the BGM Charter.

Therefore, the Exchanges represented that the board of directors of BGM determined that in order to effect the Transaction, a waiver of the BGM Ownership Limitation and the BGM Voting Limitation with respect to CBOE Holdings would be required. To do so, the board of directors of BGM adopted the Resolutions, making certain determinations with respect to CBOE Holdings and the Transaction that are necessary to waive the BGM Ownership Limitation and BGM Voting Limitation.

Specifically, the board of directors of BGM made the following determinations: (1) The acquisition of the proposed ownership by CBOE Holdings in BGM will not impair the ability of each Exchange to carry out its functions and responsibilities as an ''exchange'' under the Act and the rules and regulations promulgated thereunder, is otherwise in the best interests of BGM, its stockholders and the Exchanges, and will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder; (2) the acquisition or exercise of the proposed voting rights by CBOE Holdings in BGM will not impair the ability of each Exchange to carry out its functions and responsibilities as an ''exchange'' under the Act and the rules and regulations promulgated thereunder, that it is otherwise in the best interests of the

[46] *See* CBOE Holdings Charter, Article FIFTEENTH and proposed CBOE V Operating Agreement, Article VIII, Section 8.4(a).

[47] *See id.*

[48] 15 U.S.C. 78s(b).

[49] *See* CBOE Holdings Charter, Article TWELFTH, CBOE Holdings Bylaws, Article 10, Section 10.1 and proposed CBOE V Operating Agreement, Article XI, Section 11.2.

[50] 15 U.S.C. 78t(a).

[51] 15 U.S.C. 78t(e).

[52] 15 U.S.C. 78u–3.

[53] *See* BGM Charter, Article FIFTH, para. (a)(i) (defining ''Person'').

[54] *See id.* at Article FIFTH, para. (a)(ii) (defining ''Related Persons'').

[55] *See* BGM Charter, Article FIFTH, para. (b).

[56] *See* BGM Charter, Article FIFTH, para. (b)(ii)(B). In granting such a waiver, the BGM board of directors has the discretion to impose on the person and its Related Persons, such conditions and restrictions that it deems necessary, appropriate or desirable in furtherance of the objectives of the Act and the rules and regulations promulgated thereunder, and the governance of each Exchange. *Id.*

BGM, its stockholders and the Exchanges, and that it will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder; (3) neither CBOE Holdings, nor any of its Related Persons,[57] is subject to ''statutory disqualification'' within the meaning of Section 3(a)(39) of the Act;[58] and (4) neither CBOE Holdings, nor any of its Related Persons is a Member.[59]

The Commission believes that it is consistent with the Act to allow CBOE Holdings to wholly-own and vote all of the outstanding common stock of BGM. The Commission notes that CBOE Holdings, the new top-level holding company for the Exchanges, currently owns other national securities exchanges and is subject to governance documents that restrict concentration of ownership and voting rights.[60] The Commission also notes that, the BGM Holdings Charter and the Direct Edge Operating Agreement will specify that BGM Holdings' sole stockholder and Direct Edge's sole member will be CBOE V, a wholly owned subsidiary of CBOE Holdings.[61] As noted above, any changes to the CBOE V Operating Agreement, including any change in the provision that identifies CBOE Holdings as the sole member of CBOE V, must be filed with and approved by the Commission pursuant to Section 19 of the Act.[62] In addition, and as discussed above, CBOE Holdings and CBOE V have also included in their corporate documents certain provisions designed to maintain the independence of each Exchange's regulatory functions from CBOE Holdings and CBOE V.[63] Accordingly, the Commission does not believe that the Transaction will impair the ability of any of the Exchanges to carry out the functions and responsibilities as an ''exchange'' under the Act and the rules and regulations promulgated thereunder, or the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder.

4. Miscellaneous Changes to the Bylaws and Rules of the Exchanges

a. Bylaws of the Exchanges

The board of directors of each Exchange will continue to be the governing body of their respective Exchange and possess all of the powers necessary for the management of the business and affairs of their respective Exchange and the execution of their respective responsibilities as SROs. In connection with the Transaction, each Exchange proposed a change to their Bylaws. Each Exchange proposes to amend Section 2 of Article XI of their Bylaws to remove references to BGM and add references to CBOE Holdings and CBOE V.[64] The Exchanges' Bylaws prohibit directors of BGM, or BGM Holdings or Direct Edge, as applicable, who are not also directors, officers, staff, counsel or advisors of the Exchange from participating in any meetings of the Exchange's board of directors (or any committee thereof) pertaining to the self-regulatory function of the Exchange (including disciplinary matters).[65] The Exchanges proposed to delete references to BGM from this provision and add references to CBOE Holdings and CBOE V, which following the Transaction, will become the indirect owners of each Exchange. The Commission believes that removing references to BGM and replacing them with references to CBOE Holdings and CBOE V in Section 2 of Article XI of the Exchanges' Bylaws is consistent with the Act.

b. Member Eligibility

Rule 2.3 of each of the Exchanges' rulebooks generally provides that in order to be eligible for membership in one of the Exchanges, a registered broker or dealer is required to be a member of at least one other national securities association or national securities exchange. Membership in the Exchanges' affiliated national securities exchanges (either BZX, BYX, EDGA, or EDGX as the case may be) is not sufficient for purposes of membership eligibility.[66] According to the Exchanges, the rule is designed to ensure that a member of any of the Exchanges would be supervised by a national securities association or national securities exchange that functions as the member's designated examining authority (''DEA'').[67] The Exchanges do not function as the DEA for any of its members.[68] As discussed above, as a result of the Transaction, the Exchanges will become affiliated with the CBOE Exchanges. One of these exchanges, CBOE, does act as the DEA for certain of its members.[69] However, C2 does not function as the DEA for any of its members.[70] The Exchanges stated that they continue to believe that it is appropriate to limit membership to registered broker-dealers that are members of at least one national securities association or national securities exchange that is not affiliated with the Exchanges.[71] Therefore, the Exchanges proposed to amend Rule 2.3 to specify that a registered broker-dealer will be eligible for membership only if it is a member of a national securities association or national securities exchange other than BZX, BYX, EDGA, EDGX, or C2. The Exchanges are not excluding CBOE from the rule because it is possible for CBOE to function as a DEA for its members.[72]

The Commission notes that the proposed changes to Rule 2.3 of each Exchanges' rulebook extends the membership eligibility criteria in a way that is consistent with the current rule, taking into account the Exchanges' new affiliation with the CBOE Exchanges.

c. Affiliation Between Exchange and a Member

Rule 2.10 of each Exchange generally provides that, without the prior approval of the Commission, (i) each Exchange or any entity with which each Exchange is affiliated (as defined in Rule 12b–2 under the Act[73]), may not directly or indirectly acquire or maintain an ownership interest in a Member of the Exchange, and (ii) a Member of an Exchange may not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchanges. The Exchanges note that the purpose of Rule 2.10 is to prevent or manage potential conflicts of interest that could arise from the Exchanges or

[57] *See supra* note 53.

[58] 15 U.S.C. 78c(a)(39).

[59] The Resolutions also contain a determination that the execution and delivery of the Merger Agreement by CBOE constituted notice of CBOE's intention to acquire ownership and voting rights in excess of the BGM Ownership Limitation and BGM Voting Limitation, respectively, in writing and not less than 45 days before the Closing. *See* BGM Charter, Article FIFTH, para. (b)(iv).

[60] *See supra* notes 14–22 and accompanying text.

[61] *See supra* notes 27–28 and accompanying text.

[62] *See supra* note 26 and accompanying text.

[63] *See supra* note 39 and accompanying text.

[64] *See* Article XI, Section 2 of Bats Exchange Bylaws and Edge Exchange Bylaws.

[65] *See id.*

[66] *See* BZX, BYX, EDGX and EDGA Rule 2.3.

[67] *See* Notices, *supra* note 6, at 80107, 80099, 80120–21, and 80152.

[68] *See id.*

[69] *See id.*

[70] *See id.*

[71] *See id.*

[72] In addition, to ensure there is no confusion with respect to the possibility that a broker or dealer could qualify for membership in the Exchange based solely on membership in CBOE Futures or any other national securities exchange notice-registered with the Commission pursuant to Section 6(g) of the Act that lists or trades security-futures products, the Exchanges propose to also specify that eligibility for membership requires membership in a national securities association registered pursuant to Section 15A of the Act or a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, so as to exclude a national securities exchange registered solely under Section 6(g) of the Act.

[73] 17 CFR 240.12b–2.

their affiliates having an ownership interest in a Member.[74]

Current Rule 2.10 provides that notwithstanding the affiliation prohibitions the rule does not prohibit a member or its affiliate from acquiring or holding an equity interest in BGM that is permitted by the ownership and voting limitations contained in the BGM Charter and the BGM Bylaws. In addition, Rule 2.10 states that it does not prohibit a member from being or becoming an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange, solely by reason of such member or any officer, director, manager, managing member, partner or affiliate of such member being or becoming either (a) a director of the Exchange pursuant to the Bylaws of the Exchange, or (b) a director of the Exchange serving on the board of directors of BGM.

The Exchanges propose to replace the references to BGM with CBOE Holdings to reflect that following the Closing, CBOE Holdings will replace BGM as the ultimate parent company of each Exchange.[75] The Commission believes that these amendments are consistent with the Act as they are technical in nature. They do not alter any of the restrictions contained in Rule 2.10, rather the amendments merely update the rule text to reflect the new ownership of the Exchanges.

d. Bats Trading as Inbound Router

The Edge Exchanges also proposed to amend Rule 2.12 in each of their rulebooks to replace a reference to BGM with ''the holding company indirectly owning the Exchange and Bats Trading.'' According to the Edge Exchanges, the rule is designed to ensure that Bats Trading, as inbound router for the Exchanges does not develop or implement changes to its systems on the basis of nonpublic information obtained as a result of its affiliation with the Exchanges until such information is available generally to similarly situation members of the Exchanges in connection with the provision of inbound order routing to one of the Exchanges.[76] The proposed amendment does not alter the obligations Rule 2.12 imposes on the Edge Exchanges, but rather is a technical change to reflect the change in ownership of the Edge Exchanges. The proposed new rule language is consistent with the language used in Rule 2.12 in the Bats Exchanges' rulebooks. As such, the Commission believes that this change is consistent with the Act.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[77] that the proposed rule changes (SR–BatsBZX–2016–68; SR–BatsBYX–2016–29; SR–BatsEDGA–2016–24 and SR–BatsEDGX–2016–60) are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[78]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30796 Filed 12–21–16; 8:45 am]

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[74] *See* Notices, *supra* note 6, at 80107, 80099, 80152 and 80121.

[75] The Exchanges also proposed to add the three CBOE Exchanges to the list of eligible Exchange affiliates to reflect that following the Closing, the CBOE Exchanges will be affiliates of the Exchanges. *See* proposed BZX, BYX, EDGA and EDGX Rule 2.10. In addition, the Edge Exchanges also proposed to remove references in Rule 2.10 to DE Route, as DE Route is no longer the routing broker-dealer for the Edge Exchanges. Bats Trading is now the Edge Exchanges' routing broker-dealer. *See* proposed EDGA and EDGX Rule 2.10.

[76] *See* Notices, *supra* note 6, at 80121 and 80152.

[77] 15 U.S.C. 78s(b)(2).

[78] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79577; File No. 601–01]

Euroclear Bank SA/NV; Order of the Commission Approving an Application To Modify an Existing Exemption From Clearing Agency Registration

December 16, 2016

I. Introduction

Euroclear Bank SA/NV (''EB'') filed with the Securities and Exchange Commission (''Commission'') on May 9, 2016, an application on Form CA–1 requesting to modify an existing exemption[1] from registration as a clearing agency (''Modification Application'')[2] pursuant to Section 17A[3] of the Securities Exchange Act of 1934 (''Exchange Act'') and Rule 17Ab2–1 thereunder.[4] Notice of EB's Modification Application was published for comment in the **Federal Register** on September 6, 2016 (''Modification Application Notice'').[5] The comment period closed on October 6, 2016, and the Commission received four comments, all of which were broadly supportive of the application.[6]

Subject to certain limitations and conditions, the Existing Exemption enables EB, as operator of the Euroclear System,[7] to perform the functions of a clearing agency with respect to transactions involving certain U.S. government securities[8] for its U.S. participants[9] without registering as a

[1] *See* Self-Regulatory Organizations; Morgan Guaranty Trust Company of New York, Brussels Office, as Operator of the Euroclear System; Order Approving Application for Exemption From Registration as a Clearing Agency, Exchange Act Release No. 39643 (Feb. 11, 1998), 63 FR 8232 (Feb. 18, 1998) (''Original Exemption Order''); and Self-Regulatory Organizations; Morgan Guaranty Trust Company, Brussels Office, as Operator of the Euroclear System and Euroclear Bank, S.A.; Order Approving Application to Modify an Existing Exemption From Clearing Agency Registration, Exchange Act Release No. 43775 (Dec. 28, 2000), 66 FR 819 (Jan. 4, 2001) (''2001 Exemption Modification Order'') (together the ''Existing Exemption'').

[2] The descriptions set forth in this notice regarding the structure and operations of EB have been derived primarily from information contained in EB's amended Form CA–1 application and publicly available sources. The redacted Modification Application and non-confidential exhibits thereto are available on the Commission's Web site.

[3] 15 U.S.C. 78q–1.

[4] 17 CFR 240.17Ab2–1.

[5] *See* Euroclear Bank SA/NV; Notice of Filing of Application To Modify an Existing Exemption From Clearing Agency Registration, Exchange Act Release No. 34–78710 (Aug. 29, 2016), 81 FR 61271 (Sept. 6, 2016).

[6] *See* letters from Mark Jennis, Managing Director, DTCC (Sept. 13, 2016) (''DTCC letter''); Oscar A. Huettner, Managing Principal, LGM Financial Consulting LLC (Sept. 12, 2016) (''LGM letter''); Charles Cascarilla, Chief Executive Officer and Co-Founder, Paxos (Oct. 6, 2016) (''Paxos letter''); Kyle Brandon, Managing Director, and Robert Toomey, Esq., Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (Oct. 6, 2016) (''SIFMA letter'').

[7] ''Euroclear System'' means the securities settlement system that has been operated by EB or its predecessor since 1968 and the assets, means, and rights related to such services. All services performed by EB that relate to securities settlement and custody are part of the Euroclear System. *See* Modification Application, Exhibit S–1 at 1.

[8] As used herein, the term ''U.S. Government Securities'' has the same meaning as the term ''eligible U.S. government securities'' used in the Existing Exemption, which consists of government securities described in Section 3(a)(42) of the Exchange Act, except that it does not include any (i) foreign-targeted U.S. government or agency securities or (ii) securities issued or guaranteed by the International Bank for Reconstruction and Development (*i.e.,* the World Bank) or any other similar international organization, and that are (i) Fedwire-eligible U.S. government securities, (ii) mortgage-backed pass through securities that are guaranteed by the Government National Mortgage Association (''GNMA''), and (iii) any collateralized mortgage obligation whose underlying securities are Fedwire-eligible U.S. government securities or GNMA guaranteed mortgage-backed pass through securities and which are depository eligible securities. For reference purposes, Fedwire is a large-value transfer system operated by the Board of Governors of the Federal Reserve System that supports the electronic transfer of funds and of book-entry securities. *See* Original Exemption Order, *supra* note 1, at 8239.

[9] As used herein, the term ''U.S. Participant'' refers to any Euroclear System participant having a

clearing agency (''U.S. Government Securities Clearing Agency Activities'').[10] The Commission originally granted the Existing Exemption in 1998 to EB's predecessor, Morgan Guaranty Trust Company of New York, Brussels Office (''MGT-Brussels''), as operator of the Euroclear System (the Original Exemption Order).[11] Under the Existing Exemption, EB may provide the U.S. Government Securities Clearing Agency Activities to U.S. Participants.[12]

In the Modification Application, EB has requested that the Commission broaden the Existing Exemption to permit EB to perform certain additional clearing agency services (such as certain central securities depository (''CSD'') services [13] and collateral management services) for equity securities issued by U.S. Issuers (''U.S. Equity Securities'') for its U.S. Participants to fulfill certain collateral obligations. The Modification Application specifies these additional clearing agency functions, referred to herein as the ''U.S. Equities Clearing Agency Activities,'' as follows:

(a) The provision of clearing agency services (such as certain CSD services and collateral management services) in relation to U.S. Participants' use and reuse of U.S. Equity Securities issued by U.S. Issuers in support of collateral obligations utilizing the collateral management services provided by EB in relation to any securities or cash account held at EB that is used to receive collateral (''Collateral Accounts'') in connection with the services described in (b) below and in connection with receipt and delivery from other Euroclear System participants that are users of such collateral management services provided by EB; and

(b) solely for the purpose of implementing the services described in (a) above, the provision of certain clearing agency services for U.S. Participants' receipt and delivery of U.S. Equity Securities in relation to collateral management services through accounts held at EB that are linked to EB's account held at DTC.[14]

EB's clearing agency functions under the U.S. Equities Clearing Agency Activities will therefore entail only the movement of U.S. Equity Securities for collateral management purposes, as opposed to the relatively broader range of clearing agency functions permitted under the U.S. Government Securities Clearing Agency Activities. For example, the U.S. Government Securities Clearing Agency Activities include the settlement of purchase and sale transactions in U.S. Government Securities as well as the movement of U.S. Government Securities for collateral management purposes.

To facilitate the movement of U.S. Equity Securities for collateral management purposes, Euroclear SA/NV (''ESA''), the parent company of EB, and The Depository Trust and Clearing Corporation (''DTCC'') have entered into a joint venture known as DTCC-Euroclear Global Collateral Ltd. (''DEGCL''). As further described in Part II.D, DEGCL would provide an inventory management service (''JV–IMS'') to facilitate, among other things, the repositioning and crediting of assets necessary to perform the U.S. Equities Clearing Agency Activities.

EB has requested that it be permitted to provide the U.S. Equities Clearing Agency Activities without registering as a clearing agency and subject to the applicable conditions specified below. In addition, EB has requested that it be permitted to continue providing the U.S. Government Securities Clearing Agency Activities without registering as a clearing agency and under substantially the same conditions as those set forth in the Existing Exemption. After careful review of the comments received and the details and information provided in the Modification Application, the Commission concludes that it has sufficient information to decide whether the Modification Application should be approved. For the reasons discussed below, the Commission believes the Modification Application is consistent with the public interest, the protection of investors, and the purposes of Section 17A, and therefore grants EB's request to modify the Existing Exemption, subject to the conditions and limitations described further below.

II. Summary of EB's Organization, Current Activities, and the Modification Application

A. Organization and Supervision

EB is a limited liability company headquartered in Brussels, Belgium,[15] organized under the laws of Belgium, and authorized in Belgium as a Belgian credit institution. EB is an international CSD and a global provider of clearance, settlement, collateral management, and related services. In particular, EB provides its participants with a means of acquiring, holding, transferring, and pledging security entitlements by electronic book-entry on its records outside of the U.S., either free-of-payment or against payment, in multiple currencies.[16]

EB is part of a group of companies that serve as market infrastructures by offering clearing agency services to the domestic markets in Belgium, Netherlands, France, England, Ireland, Sweden, and Finland (collectively with EB, the ''Euroclear Group'').[17] CSD entities in the Euroclear Group are subsidiaries of ESA, a Belgian limited liability company.[18] Control and direction of the Euroclear Group strategic decisions are vested in ESA. ESA provides common services to EB and other affiliated companies of the Euroclear Group.[19] ESA maintains intercompany agreements with EB that set forth respective services and obligations.[20]

As previously noted, all services performed by EB that relate to securities settlement and custody are part of the Euroclear System, which is designated as a securities settlement system under the Belgian Settlement Finality Act.[21] According to EB, Belgian law provides for robust asset protection rights for assets deposited in the Euroclear System and for the protection of the holding of assets on the books of EB.[22] EB further

U.S. residence, based upon the location of its executive office or principal place of business, including, without limitation, (i) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act), (ii) a foreign branch of a U.S. bank or U.S.-registered broker-dealer, and (iii) any broker-dealer registered as such with the Commission, even if such broker-dealer does not have a U.S. residence.

[10] *See* Original Exemption Order, *supra* note 1, at 8232.

[11] *See supra* note 1. Before EB replaced MGT-Brussels as the operator of the Euroclear System, the Commission approved a modification to the Original Exemption Order to reflect the change in control of the Euroclear System from MGT-Brussels to EB. *See* 2001 Exemption Modification Order, *supra* note 1.

[12] *See* Original Exemption Order, *supra* note 1, at 8239.

[13] As used herein, the term ''CSD services'' has the meaning set forth in 17 CFR 240.17Ad–22(a)(3). *See* Exchange Act Release No. 34–78961 (Sept. 28, 2016), 81 FR 70786, 70901 (Oct. 13, 2016) (adopting final rules that, among other things, move the definition of ''central securities depository services'' from Rule 17Ad–22(a)(2) to (a)(3)).

[14] *See* Modification Application, Exhibit S–1, at 40.

[15] EB also has a secondary office in Braine l'Alleund, Belgium, branch offices in Wanchai, Hong Kong and Krakow, Poland, and a representative office in New York City. *See* Modification Application, Exhibit I–1.

[16] *See* Modification Application, Exhibit S–1 at 3.

[17] In 2015, the Euroclear Group had assets under custody of €27.5 trillion, turnover equivalent to €674.7 trillion, and a settlement volume of 190.7 million netted transactions. Euroclear Group's collateral management platform, the Collateral Highway, processed collateralized transactions in 2015 for an amount of €1.068 trillion on a daily basis. *See* Modification Application, Exhibit S–1 at 3.

[18] *See* Modification Application, Exhibit A–2.

[19] *See* Modification Application, Exhibit S–1 at 3.

[20] *Id.*

[21] *See* Modification Application, Exhibit K–5 at 22.

[22] *See* Modification Application, Exhibit S–1 at 35.

represents that Belgian law and EB's arrangements provide a high degree of certainty with regards to finality of transfers on EB's books, the holding of collateral in accounts, the contractual framework of participants in the Euroclear System, and default procedures.[23]

To utilize the Euroclear System, EB participants enter into a contractual relationship with EB to open and maintain securities and cash accounts at EB.[24] EB participants agree that their rights to assets held in the Euroclear System are defined and governed by Belgian law.[25] EB states that, under Belgian law, EB generally is the beneficiary of a statutory lien on assets in accounts held at EB to secure any claim it has against EB participants arising in connection with the clearance or the settlement of transactions through, or in connection with, the Euroclear System, including claims resulting from loans or advances.[26]

EB represents that it is subject to consolidated supervision by the National Bank of Belgium (''NBB'') and the Belgian Financial Services Market Authority (''FSMA'').[27] EB also represents that NBB supervises ESA, due to its status as an authorized holding company of a regulated credit institution (*i.e.,* EB) and as an institution assimilated to a securities settlement system (*i.e.,* the Euroclear System).[28]

According to EB, the NBB exercises its supervision over EB and ESA on a consolidated basis.[29] Specifically, the NBB has prudential supervision and oversight over EB as a licensed credit institution operating in Belgium. Furthermore, the NBB supervises EB in its role as operator of the Euroclear System and as a recognized CSD. EB states that the NBB is required to ensure: (1) That EB's clearance, settlement, and payment systems operate properly; (2) that those systems are efficient and sound; and (3) that EB meets the obligations applicable to credit institutions under applicable European law, as adopted into Belgian law.[30] EB represents that the NBB has the authority to order EB to limit, suspend, or stop activities if EB does not comply with the regulatory requirements of its various authorizations.[31] EB also states that the NBB assesses EB under the *Principles for Financial Market Infrastructures* (''PFMI'') and considers best practices where appropriate.[32]

EB further represents that the FSMA regulates EB for the purposes of compliance with investor protection rules and rules on the operation, integrity, and transparency of the Belgian financial markets.[33] These include requirements relating to conflicts of interest with clients, customer protection in case of insolvencies, and enforcement of conduct requirements.

B. Current Activities

The Existing Exemption permits EB to provide the U.S. Government Securities Clearing Agency Activities to U.S. Participants.[34] Under the terms of the Existing Exemption, the Commission places a limit on the volume of transactions in U.S. Government Securities conducted by U.S. Participants that can be settled through the Euroclear System. Specifically, the average daily volume of U.S. Government Securities settled through the Euroclear System for U.S. Participants may not exceed five percent of the total average daily dollar value of the aggregate volume in U.S. Government Securities.[35] To facilitate the monitoring of compliance with the volume limit and the impact of EB's operations on the U.S. Government Securities market under the Existing Exemption, EB is required to provide the Commission with quarterly reports, calculated on a twelve-month rolling basis, of (i) the average daily volume of transactions in eligible U.S. Government Securities for U.S. Participants that are subject to the volume limit and (ii) the average daily volume of transactions in eligible U.S. Government Securities for all Euroclear System participants, whether or not subject to the volume limit.[36] EB is also required to notify the Commission regarding material adverse changes in any account maintained in the Euroclear System for U.S. Participants.[37] In addition, EB is required to respond to Commission requests for information regarding any U.S. Participant about whom the Commission has financial solvency concerns, including, for example, a settlement default by a U.S. Participant.[38] The Commission also requires a satisfactory memorandum of understanding with the Belgian banking and securities regulator (currently the NBB) to facilitate the provision of information by EB to the Commission.[39]

EB participants are able to utilize various clearance and settlement services through the Euroclear System.[40] Among those services are the EB collateral management services (''EB–CMS''), which provide a framework for exchanging collateral to fulfill bilateral obligations between counterparties.[41] Parties to bilateral arrangements that require the posting of collateral by one party (''Collateral Giver'') in favor of the other party

[23] *See* Modification Application, Exhibit S–1 at 35.

[24] *See* Modification Application, Exhibit J.

[25] Specifically, EB represents that EB participants' rights in securities held in the Euroclear System are defined and governed by Belgian Royal Decree No. 62 dated Nov. 10, 1967 on the Deposit of Fungible Financial Instruments and the Settlement of Transactions involving such Instruments or similar Belgian legislation. EB states that the applicable Belgian law is effectively similar to securities entitlements under Revised Article 8 of the Uniform Commercial Code. *See* Modification Application, Exhibit S–1 at 36.

[26] *See* Modification Application, Exhibit E–5 at 34.

[27] *See* Modification Application, Exhibit S–1 at 20.

[28] *See* Modification Application, Exhibit S–1 at 20. According to EB, pursuant to Article 20, § 2 of the Belgian Royal Decree of September 26, 2005, institutions assimilated to a settlement institution may not have shareholdings in commercial companies without the prior approval of the NBB, unless the shareholding is taken in companies whose activities consist, in whole or in part, in the activities that a settlement institution or an institution assimilated thereto may carry out.

[29] *Id.* In addition, EB is submitted to the Regulation 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR) IV, and Regulation 909/2014 of 23 July 2014 on improving securities settlement in the European Union and on central securities depositaries (CSDR). *See* Modification Application, Exhibit K–5 at 16.

[30] *See* Modification Application, Exhibit S–1 at 20.

[31] *Id.*

[32] *See* Modification Application, Exhibit S–1 at 20. The PFMI are standards applicable to financial market infrastructures, such as CSDs and securities settlement systems. Committee on Payment and Settlement Systems (now the Committee on Payment and Market Infrastructure) and Technical Committee of the International Organization of Securities Commissions, Principles for financial market infrastructures (Apr. 16, 2012), *available at http://www.bis.org/publ/cpss101a.pdf.*

[33] *See* Modification Application, Exhibit S–1 at 20–21.

[34] *See* Original Exemption Order, *supra* note 1, at 8239.

[35] *See id.* at 8239.

[36] *See* Original Exemption Order, *supra* note 1, at 8240. EB's non-U.S. participants are not subject to any restrictions under the Existing Exemption.

[37] For purposes of the Original Exemption Order, the term ''material adverse changes'' included (i) the termination of any U.S. Participant; (ii) the liquidation of any securities collateral pledged by a U.S. Participant to secure an extension of credit made through the Euroclear System; (iii) the institution of any proceedings to have a U.S. Participant declared insolvent or bankrupt; or (iv) the disruption or failure in whole or in part in the operations of the Euroclear System either at its regular operating location or at its contingency center. *See* Original Exemption Order, *supra* note 1, at 8240, n.78.

[38] *See* Original Exemption Order, *supra* note 1, at 8240.

[39] *See* 2001 Exemption Modification Order, *supra* note 1, at 821; *see also* Understanding Regarding an Application of Euroclear Bank for an Exemption Under U.S. Federal Securities Laws (January 30, 2001) *available at https://www.nbb.be/doc/cp/nl/aboutcbfa/mou/pdf/mou_2001-01-30_euroclearbank.pdf.*

[40] *See* Modification Application, Ex. J.

[41] *See* Modification Application, Ex. S–1 at 3.

(''Collateral Taker'') may use the EB–CMS to secure credit exposures arising under such bilateral arrangements. The terms of such bilateral arrangements and related collateral needs (including the credit exposure, collateral requirements, and collateral terms) are negotiated and agreed between the parties independently of EB. After such arrangements are agreed, the parties then enter into an agreement with EB to provide the EB–CMS.

EB states that its non-U.S. participants use the EB–CMS to meet collateral obligations with a variety of assets, including U.S. Government Securities and U.S. Equity Securities.[42] EB also represents that U.S. Participants currently use the EB–CMS to meet collateral obligations with a wide variety of assets including U.S. Government Securities, but not including U.S. Equity Securities, as EB prohibits U.S. Participants from holding U.S. Equity Securities in an account at EB for any purpose as part of its contractual documentation with its participants, consistent with the terms of the Existing Exemption (''Current Equities Restrictions'').[43] EB represents that automated systems protocols and control procedures are implemented in the Euroclear System to enforce the Current Equities Restrictions. The systems protocols consist of coded validation rules that are part of EB's fully automated and standard processes that run prior to the settlement of any securities movement to or from an account held at EB.[44]

C. Modification Application

EB has requested that the Commission broaden the Existing Exemption to allow it to provide the EB–CMS to its U.S. Participants using U.S. Equity Securities. Specifically, EB has requested that the Commission: (1) Continue the Existing Exemption under substantially similar conditions except as otherwise specified herein, (2) broaden the Existing Exemption to allow EB to provide the U.S. Equities Clearing Agency Activities under new conditions applicable to those activities, and (3) apply conditions to EB that are largely harmonized between the U.S. Government Securities Clearing Agency Activities and U.S. Equities Clearing Agency Activities (collectively, the ''Clearing Agency Activities'').[45] Below the Commission discusses each of these requests in turn.

First, EB has requested that the Commission continue the Existing Exemption to conduct the U.S. Government Securities Clearing Agency Activities without: (i) Requiring EB to register as a clearing agency with the Commission; (ii) changing the definition of the terms U.S. Government Securities or U.S. Participants, as set forth in the Existing Exemption; or (iii) changing the conditions set forth in the Existing Exemption with regards to the U.S. Government Securities Clearing Agency Activities, listed below:

(a) *Volume Limit.* The average daily volume of transactions in eligible U.S. Government Securities for U.S. Participants processed through EB as operator of the Euroclear System may not exceed five percent of the total average daily dollar value of the aggregate volume in eligible U.S. Government Securities.

(b) *Commission Access to Information regarding U.S. Government Securities Clearing Agency Activities.* EB will continue to provide the Commission with quarterly reports, calculated on a twelve-month rolling basis, of (a) the average daily volume of transactions in eligible U.S. Government Securities for U.S. Participants that are subject to the volume limit as described in Section IV.C.2 of the Original Exemption Order and (b) the average daily volume of transactions in eligible government securities for all Euroclear System participants, whether or not subject to the volume limit as described in Section IV.C.2 of the Original Exemption Order.[46]

Second, EB has requested that the following conditions of the Existing Exemption with regards to the U.S. Government Securities Clearing Agency Activities be replaced and superseded:

(a) The obligations in Section IV.C.3 of the Original Exemption Order to provide disclosure documents to the Commission;

(b) the obligations in Section IV.C.3 of the Original Exemption Order to file with the Commission amendments to its application for exemption on Form CA–1; and

(c) the obligations in Section IV.C.3 of the Original Exemption Order to notify the Commission regarding material adverse changes in any account maintained by Euroclear for its U.S. Participants and to respond to a Commission request for information about any U.S. Participant about whom the Commission has financial solvency concerns.[47]

The conditions set forth in Part IV.D would replace the above and include, among other things, substantially similar obligations to the above.

Third, EB has requested that the Commission permit EB to provide, without registering as a clearing agency with the Commission, the U.S. Equities Clearing Agency Activities, subject to certain conditions. As described in the Modification Application, EB's provision of U.S. Equities Clearing Agency Activities would entail activities such as custody and safekeeping,[48] settlement,[49] and asset servicing[50] on behalf of U.S. Participants with respect to U.S. Equity Securities. For example, EB would maintain securities accounts on its books,[51] provide safekeeping of and recordkeeping for those securities accounts,[52] settle instructions by participants,[53] and provide recordkeeping and reporting in real time on the status of settlement to participants.[54] EB also would process corporate actions as part of its asset servicing business for any U.S. Equity Securities that remain in EB's account held at DTC on the record date.[55]

The EB–CMS would be offered to U.S. Participants in support of their obligations under security-based swap transactions, securities lending transactions, and repurchase agreements, among other transactions.[56] The EB–CMS would independently verify that the collateral proposed and provided by the Collateral Giver meets the terms reported by the counterparties for the duration of the collateral obligation.[57] EB would do this by calculating the exchange of value necessary to meet the collateral obligation information entered in by the users of the EB–CMS, including by making value determinations, such as marking to market the value of the

[42] *See* Modification Application, Exhibit S–1 at 34.

[43] *Id.* EB's customer contracts provide that: ''Due to restrictions imposed on Euroclear Bank by the United States Securities and Exchange Commission (S.E.C.) following SEC Rule 17Ab2–1, equities, ETFs and REITs issued by companies incorporated in a state or territory of the United States can be held in Euroclear Bank by non-US Participants only.'' *See* Modification Application, Exhibit S–1 at 6.

[44] *See* Modification Application, Exhibit S–1 at 34.

[45] In harmonizing the conditions between the Clearing Agency Activities, new operational risk conditions, set forth in Part IV.C, and certain additional other conditions, set forth in Part IV.D, would also apply to the U.S. Government Securities Clearing Agency Activities.

[46] *See* Modification Application, Exhibit S–1 at 39.

[47] *See id.*

[48] *See* Modification Application, Exhibit S–1 at 4.

[49] *See* Modification Application, Exhibit S–1 at 5.

[50] *See* Modification Application, Exhibit S–1 at J–3.

[51] *See* Modification Application, Exhibit S–1 at 2.

[52] *See* Modification Application, Exhibit K–5 at 80–81.

[53] *See* Modification Application, Exhibit K–5 at 76, 83.

[54] *See* Modification Application, Exhibit K–5 at 76.

[55] *See* Modification Application, Exhibit J–3.

[56] *See, e.g.,* Modification Application, Exhibit P–2 (describing necessary revisions to its Operating Procedures related to collateral services, derivatives services, loan services, repurchase services, and securities lending services arising out of the proposed U.S. Equities Clearing Agency Activities).

[57] *See* Modification Application, Exhibit J–3.

collateral based on reference data.[58] Also, EB would generate instructions and communicate the instructions to EB's settlement processing infrastructure to transfer collateral among the Collateral Accounts.[59] Under the Existing Exemption, EB may already offer the EB–CMS for U.S. Government Securities to U.S. Participants, but EB may only offer the EB–CMS for U.S. Equity Securities to its non-U.S. participants, because non-U.S. participants are not covered by the scope of the Existing Exemption.

D. Collateral Regulations and Related Infrastructure

According to the Modification Application, new and enhanced regulatory requirements (''New Collateral Regulations'') are leading counterparties to derivative and financing transactions to seek streamlined margin processing and increased efficiency in the availability and deployment of collateral.[60] These New Collateral Regulations are expected to be implemented in the European Union in the near future.[61] EB states that the regulatory changes include new restrictions on eligible collateral, requiring the use of highly liquid assets, prescribed haircuts, and segregation requirements, as well as a prohibition on rehypothecation for initial margin. EB believes that, when fully implemented, the New Collateral Regulations will result in increased capital requirements, mandatory central clearing of more derivative transactions, and new margining rules for bilateral trades, which will increase demand for high quality collateral. EB projects that the requirement for more transactions and exposures to be collateralized globally will result in a significant increase in the number of required collateral movements between market participants, which will have implications for counterparty credit risk, funding and capital charges, and reputational and operational risk.

EB also represents that these regulatory changes include requirements for initial margin for counterparties to certain derivative and financing transactions, as well as a reduction or removal of unsecured thresholds for variation margin. EB expects that these new initial margin requirements will significantly increase the amount of collateral required to support a number of derivative and financing transactions. In addition, EB represents that it is expected that the removal or reduction of unsecured thresholds for variation margin will mean any changes in underlying transaction valuations may trigger increased margin calls, requiring market participants to hold additional collateral available for posting.

EB represents that the New Collateral Regulations therefore are expected to greatly increase the complexity of collateral management and create new competition for collateral.[62] Industry research cited by EB indicates that as these regulatory changes take effect, the volume of required collateral movements will increase and the number of collateral settlement fails and associated costs are likely to rise proportionally.[63] EB has requested to broaden its exempt clearing agency activities for the purpose of assisting its participants' compliance with these regulations, which, as stated earlier, are scheduled to take effect in the near future and which will significantly affect the use of collateral. In connection with its request, EB has taken preparatory measures to create the infrastructure necessary to accommodate the U.S. Equities Clearing Agency Activities, including the formation in 2014 of DEGCL, the joint venture between Euroclear and DTCC. DEGCL describes itself as an open architecture infrastructure designed to streamline collateral processing globally, providing solutions for both over-the-counter derivatives and financing that deliver transparency, collateral mobility, efficiency, and security through its utility offerings.[64] DEGCL is authorized as a service company by the Financial Conduct Authority (''FCA'') in the United Kingdom.[65] EB represents that DEGCL seeks to provide services to its users, including buy-side and sell-side financial institutions, in meeting their risk management and regulatory requirements for the holding and exchange of collateral as required by the New Collateral Regulations.[66] These services will be offered to users located primarily in Europe and the U.S.[67]

With respect to the U.S. Equities Clearing Agency Activities, DEGCL will facilitate a U.S. Participant's repositioning of assets in U.S. Participant-held accounts at The Depository Trust Company (''DTC'') for use in the U.S. Participant's corresponding Collateral Account at EB in the EB–CMS. In particular, these activities will be provided by the JV–IMS, a DEGCL service offering that, according to DEGCL, will automate certain collateral management tasks, reposition inventory across settlement locations in the U.S. and Europe, and thereby make collateral more readily available.[68] EB represents that the JV–IMS would provide an automated mechanism for an entity that is both a participant of EB and DTC (''JV–IMS User'')[69] to receive recommendations on how to reposition assets in the JV–IMS User's account held at DTC, including U.S. Equity Securities, for subsequent crediting of those assets to its Collateral Accounts within the EB–CMS (and for the return of such assets to the JV–IMS User's account held at DTC). To facilitate the JV–IMS, EB will become a participant at DTC, subject to

[58] *See* Modification Application, Exhibit K–5 at 60 (referencing obtaining the market value of a security. The EB–CMS system does not apply any further haircuts or adjustments once the market value is obtained from third party data providers); *see also* Euroclear plc, Risk Management at Euroclear: Including Pillar 3 Disclosure 2012—Euroclear plc, at 43 (2012) (''Securities for which Euroclear Bank does not obtain external quotations regularly can also be valued according to the price associated with securities transactions in the Euroclear system, or according to theoretical models.''), *available at https://www.euroclear.com/dam/Brochures/Pillar3_2012.pdf.*

[59] *See* Modification Application, Exhibit J–3.

[60] *See* Modification Application, Exhibit S–1 at 6.

[61] *Id.; see also* Peter Madigan, *EU non-cleared margin regime set to take effect in January 2017,* Risk.net (Sept. 27, 2016) (regarding the adoption and implementation of the draft Regulatory Technical Standards on risk mitigation techniques for non-centrally cleared OTC derivatives), *available at http://www.risk.net/risk-magazine/news/2472246/eu-non-cleared-margin-regime-set-to-take-effect-in-january-2017.*

[62] EB states that collateral movements will need to be tracked and applied against a growing number and type of credit support documentation, while segregation rules will multiply the number of collateral accounts needed and correspondingly increase the complexity of accurately processing collateral movements across account types, fragmented central clearing, and collateral delivery channels. *See* Modification Application, Exhibit S–1 at 7; *see also* Implications of Collateral Settlement Fails: An Industry Perspective on Bilateral OTC Derivatives (Feb. 2016), *available at http://www.imas.org.sg/uploads/media/2016/03/03/1046_Implications_of_Collateral_Settlement__FINAL.pdf* (''Implications of Collateral Settlement Fails''); Collateral Management in Europe: Searching for Central Intelligence (May 2015), *available at https://www.euroclear.com/dam/Brochures/Euroclear-Collateral-Management-Aite-Paper.pdf;* The Economics of Collateral (Dec. 2013), *available at http://dtcc.com/~/media/Files/Downloads/WhitePapers/LSE%20Report.ashx.*

[63] *See, e.g.,* Implications of Collateral Settlement Fails, *supra* note 61, at 5.

[64] *See* ''State street to pilot GlobalCollateral ltd's margin settlement messaging service,'' DEGCL Press Release (July 11, 2016), *available at http://www.globalcollateral.net/press5-statestreet.html.*

[65] DEGCL's reference number as an authorized service company is 686269. *See* FCA Financial Services Register, *available at https://www.fca.org.uk/register.*

[66] *See* Modification Application, Exhibit S–1 at 7.

[67] *See id.*

[68] *See* Modification Application, Exhibit S–1 at 8; ''State street to pilot GlobalCollateral ltd's margin settlement messaging service,'' DEGCL Press Release (July 11, 2016), *available at: http://www.globalcollateral.net/press5-statestreet.html.*

[69] *See id.*

approval by DTC, its standard membership requirements and certain heightened requirements for a non-U.S. entity.[70]

To initially establish its sub-account held at DTC for the JV–IMS prior to its initial use, a JV–IMS User will set parameters that specify which types of assets in its account held at DTC (and in what amounts) it will make available for the JV–IMS, including any limits or criteria on those assets (such as ratings).[71] The JV–IMS User will then transfer assets that meet the parameters to a sub-account held at DTC that is designated for, and dedicated to, the JV–IMS. The JV–IMS will then monitor that information and independently verify that the assets identified by the JV–IMS User meet its own parameters, as well as the EB eligibility requirements (such as an accepted CUSIP number). If so, the JV–IMS will prepare and submit to EB free-of-payment delivery instructions (which EB will in turn submit to DTC on the JV–IMS User's behalf) to transfer the assets identified by the JV–IMS User in its designated sub-account held at DTC to EB's account held at DTC.[72] The JV–IMS will also prepare and submit instructions to EB to credit such transferred assets from EB's account held at DTC to the relevant JV–IMS User's Collateral Accounts.

Additionally, the JV–IMS would facilitate the automated return of such assets to the JV–IMS User's account held at DTC when necessary to meet other settlement obligations and for corporate actions by preparing and submitting to EB (for eventual forwarding by EB to DTC) free-of-payment delivery instructions to transfer such assets from EB's account held at DTC to the relevant JV–IMS User's sub-account held at DTC. Finally, the JV–IMS would report to the JV–IMS User all settlement instructions generated via the JV–IMS, the status of the generated settlement instructions, and other relevant information in regards to such settlement instructions. All of the foregoing would be subject to the DTC rules regarding a link with EB that was approved by the Commission in July 2016.[73]

After the JV–IMS User's assets are credited to EB's account held at DTC via the JV–IMS processes described above, the assets would then be credited to the Collateral Accounts for the relevant EB participant.[74] As stated above, with respect to the U.S. Equities Clearing Agency Activities, EB's internal protocols would structure these Collateral Accounts to allow U.S. Participants to: (1) Take receipt of U.S. Equity Securities credited to the account via the JV–IMS process described immediately above; (2) deliver U.S. Equity Securities out of the Collateral Accounts for mobilization as collateral through the EB–CMS infrastructure and to receive U.S. Equity Securities into the Collateral Accounts mobilized from other participants of the EB–CMS; and (3) deliver U.S. Equity Securities back to the relevant JV–IMS User's sub-account at DTC. EB represents that these transfer and use restrictions on Collateral Accounts would prevent a U.S. Participant's U.S. Equity Securities held in Collateral Accounts from being used for any other purposes in the Euroclear System, such as normal settlement activity, except under certain circumstances involving the default of a Collateral Giver.[75]

Currently, non-U.S. JV–IMS Users may move U.S. Equity Securities from DTC to EB by transferring the securities to an account held at DTC for EB's custodian. Approving the Modification Application would expand the options available to non-U.S. participants, such that non-U.S. JV–IMS Users holding U.S. Equity Securities at DTC could also transfer U.S. Equity Securities to EB's DTC account. If a user of the EB–CMS defaults, either a Collateral Taker or a Collateral Giver can notify EB of a default under their bilateral transaction. EB's operations staff would then initiate a process to override the regular controls that govern use of U.S. Equity Securities as collateral and would instruct DTC to debit those securities from EB's DTC Account and to credit them to the account held at DTC for EB's custodian, while still being credited to the non-defaulting party's account at EB.[76]

In the Modification Application, EB has proposed to amend the Current Equities Restrictions[77] to permit the use by U.S. Participants of U.S. Equity Securities subject to the transfer and use restrictions described above. In all other circumstances, the Current Equities Restrictions would otherwise remain applicable.

III. Discussion

A. Statutory Standards

Section 17A of the Exchange Act directs the Commission to facilitate the establishment of (i) a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) linked or coordinated facilities for clearance and settlement of securities transactions.[78] In facilitating the establishment of the national clearance and settlement system, the Commission must have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents.[79] Section 17A(b)(1) of the Exchange Act requires all clearing agencies to register with the Commission.[80] It also states that, upon the Commission's motion or upon a clearing agency's application, the Commission may conditionally or unconditionally exempt a clearing agency from any provision of Section 17A of the Exchange Act or the rules or regulations thereunder if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities and funds.[81] The Commission notes that it has previously found an exemption from clearing agency registration under Section 17A(b)(1) to be an appropriate response in instances where an entity has engaged in a limited scope of clearing agency activity.[82]

B. Comments Received

The Commission received four comment letters in response to the Modification Application Notice.[83] Commenters included U.S. market participants and an industry representative. Among the commenters was DTCC, which is the holding company for three clearing agencies registered with the Commission and co-

[70] EB has signed a DTC Participant's Agreement pursuant to which it agreed that the DTC rules shall be a part of the terms and conditions of every contract or transaction that EB may make or have with DTC. *See id.; see also* DTC Policy Statements on the Admissions of Participants (June 2013).

[71] *See* Modification Application, Exhibit S–1 at 8.

[72] This process is subject to DTC rules governing EB's role in repositioning assets. *See* Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change to Establish a Link with Euroclear, Exchange Act Release No. 78358 (July 19, 2016), 81 FR 48482 (July 25, 2016) (''DTC EB Link Rule'').

[73] *See id.*

[74] All settlement activity related to the JV–IMS that occurs on the books of DTC is governed exclusively by DTC procedures. All activity related to the use of assets that occurs on the books of EB is governed exclusively by the EB contractual framework. *See* Modification Application, Exhibit S–1 at 9.

[75] *See* Modification Application, Exhibit S–1 at 11.

[76] *Id.*

[77] *See supra* Part II.B.

[78] *See* 15 U.S.C. 78q–1(a)(2).

[79] *See* 15 U.S.C. 78q–1(a)(2)(A).

[80] *See* 15 U.S.C. 78q–1(b); 17 CFR 240.17Ab2–1.

[81] *See* 15 U.S.C. 78q–1(b)(1).

[82] *See* Modification Application Notice, *supra* note 5, at 61277.

[83] *See supra* note 6.

owner of DEGCL. All of the commenters expressed support for the Modification Application.

Each of the commenters stated that the proposed broadening of EB's exempted clearing agency activity would benefit U.S. market participants. One commenter stated that the Modification Application would provide U.S. market participants with more options to meet collateral and liquidity demands by providing access to an expanded pool of high quality collateral.[84] The commenter further explained that the use of U.S. Equity Securities as collateral by non-U.S. participants is common in the European Union, and the Modification Application would help provide a level playing field between U.S. Participants and non-U.S. participants in the types of U.S. securities that can be offered as collateral in the EB–CMS.[85] Another commenter noted that the U.S. Equities Clearing Agency Activities would enable U.S. market participants to optimize their management of U.S. Equity Securities inventory by effectively and efficiently addressing collateral management needs in other markets and time zones.[86] Several commenters also stated that expanding the scope of activity under the Existing Exemption to include U.S. Equity Securities would result in lower costs for U.S. market participants and more efficient capital management.[87]

Each of the commenters also stated that the U.S. Equities Clearing Agency Activities would reduce risk. One commenter stated that the Modification Application would reduce systemic risk by supporting more efficient allocation of collateral, thus reducing transaction costs and the risk of settlement failures.[88] Another commenter stated that the effective management of collateral inventory on a real-time basis, as described in the Modification Application, would reduce operational risk and increase efficiency.[89] A third commenter stated that allowing U.S. Participants to use U.S. Equity Securities in the EB–CMS would reduce settlement and liquidity risks across the broader securities markets.[90]

In addition, the commenters more generally endorsed the Modification Application based on EB's reputation as a market infrastructure provider.[91] One commenter explained that EB provides its participants with an efficient means of acquiring, holding, transferring, and pledging security entitlements by electronic book entry on its records outside the U.S., either free of or versus payment, in multiple currencies.[92] Commenters also noted more generally that EB is well-known and well-regulated,[93] and that it operates in a manner consistent with the PFMI.[94]

Finally, one commenter expressed views regarding the specific terms and conditions in the Modification Application Notice. The commenter expressed a favorable view of the Modification Application, stating that, given the limited scope of the modification request, and in light of the increased transparency that would result from the additional monitoring, reporting, and other conditions proposed by EB in the Modification Application, the Commission should consider EB compliant with applicable regulatory standards.[95] The commenter also requested that the Commission use the proposed reporting conditions to monitor the growth of the U.S. Equities Clearing Agency Activities rather than establish a fixed volume limit at this time, noting that the proposed reporting conditions would provide the Commission with greater transparency and broader visibility into cross-border collateral management.[96] In addition, the commenter stated that it did not see other providers being disadvantaged by an expansion of EB's exempted activity.[97]

C. Evaluation of the Modification Application

With respect to the U.S. Government Securities Clearing Agency Activities, the Modification Application does not propose to make any material changes to the U.S. Government Securities Clearing Agency Activities, and therefore the Commission is not reconsidering the appropriateness of an exemption for those activities in this order. In addition, EB has represented in the Modification Application that it continues to meet the standards previously applied when the Commission approved the Existing Exemption,[98] and for the purposes of its consideration of the Modification Application, the Commission is taking those representations into account.[99]

With respect to the U.S. Equities Clearing Agency Activities, the Commission believes that, while such activities reflect an expansion of the range of securities for which EB may perform clearing agency functions relative to the Existing Exemption, those additional clearing agency functions would remain limited because EB would necessarily rely on its link with DTC to perform them. For example, the Modification Application requests only that EB be permitted to settle collateral movements involving U.S. Equity Securities and that the settlement of those collateral movements occur through the use of dedicated accounts at EB and DTC structured so that a U.S. Participant can only: (i) Receive U.S. Equity Securities in these accounts; (ii) deliver U.S. Equity Securities out of these accounts for mobilization as collateral in the EB infrastructure; and (iii) deliver U.S. Equity Securities back to the relevant user's account at DTC.[100] The Modification Application does not request that EB be permitted to provide the full range of CSD and securities settlement activities for the purchase or sale of such securities. Finally, the Commission believes that the terms and conditions of the exemption set forth in this order would, as noted by one of the commenters,[101] assist the Commission in evaluating and monitoring the U.S. Equities Clearing Agency Activities on an ongoing basis to assess, among other considerations, how such limited

[84] *See* SIFMA letter at 2 (also noting that the Modification Application would improve asset mobility for U.S. banks and broker-dealers engaging in securities financing transactions); *see also* LGM letter at 1 (stating that U.S. institutions would significantly benefit from being allowed to use U.S. Equity Securities as collateral in the international environment).

[85] *See* SIFMA letter at 2.

[86] *See* Paxos letter at 2–3; *see also* DTCC letter at 3 (stating that the Modification Application would provide U.S participants with the ability to optimize collateral globally).

[87] *See* SIFMA letter at 2; DTCC letter at 3; Paxos letter at 3;

[88] *See* SIFMA letter at 3; *see also* DTCC letter at 3 (stating that the JV–IMS will reduce systemic risk by supporting the more efficient allocation of collateral, reducing transaction costs and the risk of settlement failures.).

[89] *See* Paxos letter at 2.

[90] *See* LGM letter at 1.

[91] *See* DTCC letter at 3; Paxos letter at 1; SIFMA letter at 3.

[92] *See* Paxos letter at 1.

[93] *See* LGM letter at 2–3.

[94] *See* DTCC letter at 3; Paxos letter at 1; SIFMA letter at 3.

[95] *See* Paxos letter at 1–2.

[96] *See id.*

[97] *See id.*

[98] *See* Modification Application, Exhibit S–1 at 13.

[99] The Commission also notes that it has no basis to believe that EB has not operated within and otherwise performed in accordance with the terms and conditions of the Existing Exemption.

[100] *See* Modification Application, Exhibit S–1, at 9–10.

[101] *See* Paxos letter at 3 (responding to a request for comment in the Modification Application Notice regarding whether the Commission should include among the conditions for the U.S. Equities Clearing Agency Activities a volume limit similar to the volume limit under the Existing Exemption that applies to the U.S. Government Securities Clearing Agency Activities and stating that a fixed volume limit should not be added as a condition). The Commission does not believe that such a condition is necessary and has declined to include it.

activity interacts with other aspects of the national clearance and settlement system and whether the exemption and its conditions remain appropriate. Accordingly, the Commission believes that an exemption subject to the terms and conditions set forth herein, rather than full registration as a clearing agency, continues to be the appropriate regulatory status for EB.

Below, the Commission evaluates EB's request for an exemption from registration as a clearing agency for the U.S. Equities Clearing Agency Activities under Section 17A(b)(1) of the Exchange Act, including whether the Modification Application is consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act. The Commission also describes the specific conditions that will be imposed in connection with the approval of EB's request for an exemption and explains its rationale for such conditions.

1. Facilitating the Establishment of Linked or Coordinated Facilities for the Settlement of Transactions

Congress found that the linking of settlement facilities and the development of uniform standards and procedures for settlement will reduce unnecessary costs and increase the protection of investors, and directed the Commission to use its authority to facilitate the establishment of linked or coordinated facilities for settlement of transactions in securities.[102] As previously described, EB will perform the U.S. Equities Clearing Agency Activities using settlement facilities linked between DTC, a clearing agency registered with the Commission, and EB.[103] For the reasons discussed in the Modification Application Notice and as discussed further below, the Commission believes that links and coordination between these two settlement providers will foster the establishment of uniform standards and procedures, which in turn may result in benefits to participants of both DTC and EB resulting from such standardization.

Commenters generally agreed that the proposed link between EB and DTC would provide benefits to U.S. market participants. One commenter explained that the U.S. Equities Clearing Agency Activities could help U.S. market participants optimize the management of their U.S. Equity Securities inventory by efficiently addressing management needs in other markets and time zones.[104] Another commenter stated that adding the ability to reposition equity assets held at DTC for transactions on the books at EB would provide common participants of DTC and EB with the ability to optimize collateral globally, reduce costs, and manage their balance sheets in a capital efficient manner.[105] The Commission agrees that the greater coordination among settlement providers in performing the U.S. Equities Clearing Agency Activities is consistent with the public interest because it could facilitate improved asset mobilization generally, benefiting U.S. market participants.

2. Safeguarding Securities and Funds Related to the Settlement of Securities Transactions

Congress found that the safeguarding of securities and funds related to the settlement of securities transactions is necessary for the protection of investors, and directed the Commission to have due regard for the safeguarding of securities and funds in the use of its authority under Section 17A of the Exchange Act.[106] Accordingly, the Commission has reviewed EB's representations with respect to its rules, procedures, and controls on the rights of securities issuers and holders; the creation of securities positions within client accounts; the regular review of such procedures and controls by EB's internal audit department and external auditor; the enterprise risk management framework EB operates under; and the role that DTC will play as a depository for U.S. Equity Securities. As discussed in the Modification Application Notice, the Commission has adopted rules under Section 17A of the Exchange Act that, among other things, help facilitate the safeguarding of funds and securities by registered clearing agencies.[107] For example, the Commission's rules require certain registered clearing agencies to have policies and procedures to, among other things, immobilize or dematerialize securities certificates and transfer them by book entry to the greatest extent possible; eliminate principal risk by linking securities transfers to funds transfers; identify sources of operational risk and minimize them through the development of appropriate systems, controls and procedures; and have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations.[108] The Commission has also noted that registered clearing agencies develop and maintain plans to assure the safeguarding of securities and funds; the integrity of automated data processing systems; the recovery of securities, funds, or data under a variety of loss or destruction scenarios; and have business continuity plans that allow for the timely recovery of operations and the fulfillment of a registered clearing agency's obligations.[109]

EB has rules and procedures in place to ensure that the creation of securities positions is only performed upon receipt of securities to be credited to client accounts, and that removal of these securities positions is processed without manual intervention and upon final maturity or in accordance with a corporate event. Additionally, EB represents that it reports movements in client accounts to clients on a daily basis, and that it regularly reviews its procedures and controls.[110] EB's risk mitigation practices and internal controls are also subject to regulatory oversight by the NBB. The Commission notes that commenters also viewed favorably EB's ability to safeguard securities and funds, stating that EB is a well-known and well-regulated market infrastructure provider that operates under internationally developed standards,[111] and that EB has a 40-plus-year record of efficiently managing settlements and custody across numerous markets.[112] Finally, the conditions set forth below will allow the Commission to examine EB and monitor the U.S. Equities Clearing Agency Activities so that the Commission can assess any impact the activities may have on U.S. market participants and the U.S. securities markets. In this respect, the Commission believes that EB's operations are consistent with the Commission's current regulatory approach to the safeguarding of securities and funds related to the settlement of securities transactions, and consistent with the protection of investors, because the transfer of securities will take place via book entry at EB. As described in the Modification

[102] *See* 15 U.S.C. 78q–1(a)(1)(D), (a)(2)(A)(ii).

[103] *See* Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change to Establish a Link with Euroclear, Exchange Act Release No. 34–78358 (July 19, 2016), 81 FR 48482 (July 25, 2016).

[104] *See* Paxos letter at 2.

[105] *See* DTCC letter at 3.

[106] *See* 15 U.S.C. 78q–1(a)(1)(A), (2)(A).

[107] *See* 12 CFR 240.17Ad–22(d); 12 CFR 242.1000 *et seq.; see also* 12 CFR 240.17Ad–22(e) (adopted subsequent to publication of the Modification Application Notice with a compliance date of April 11, 2017).

[108] *See* 12 CFR 240.17Ad–22(d)(4), (10), and (13).

[109] *See* Exchange Act Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219, 66268 (Nov. 2, 2012).

[110] Part of this review includes an International Standard on Assurance Engagements 3402 report, which, pursuant to the conditions set forth in Part IV.C, will be provided to the Commission on an annual basis.

[111] *See* DTC letter at 3; SIFMA letter at 3.

[112] *See* LGM letter at 1.

Application Notice, the Commission has previously stated its belief that the immobilization and dematerialization of securities and their transfer by book entry results in reduced costs and risks associated with securities settlements and custody by removing the need to hold and transfer many, if not most, physical certificates.[113] Accordingly, the Commission believes that approval of the Modification Application would be consistent with the public interest and the protection of investors generally, and specifically, the safeguarding of securities and funds under EB's provision of the U.S. Equities Clearing Agency Activities.

3. Prompt and Accurate Settlement of Securities Transactions

Congress found that the prompt and accurate clearance and settlement of securities transactions is necessary for the protection of investors and that inefficient procedures for settlement imposed unnecessary costs on investors.[114] For the reasons discussed in the Modification Application Notice and as discussed further below, the Commission believes that approval of the Modification Application would promote the prompt and accurate clearance and settlement of securities transactions and the protection of investors because EB's settlement process is consistent with prior Commission observations regarding delivery versus payment (''DVP'') systems. The Commission has previously stated that DVP reduces the risk that a party would lose some or its entire principal because payment is made only if securities are delivered.[115] The Commission also believes that a DVP method reduces the potential that delivery of the security is not appropriately matched with payment for a security. Therefore, the Commission believes the use of a DVP method promotes the clearing agency's ability to facilitate prompt and accurate clearance and settlement.[116] One commenter addressed how EB eliminates the principal risk described above in noting that EB currently provides its participants with an efficient means of acquiring, holding, transferring, and pledging security entitlements by electronic book entry on its records outside the U.S., either free of or versus payment, in multiple currencies.[117] The Commission notes that the EB system has controls in place requiring the availability of the cash and securities before executing instructions (*i.e.,* positioning), preventing settlement of the transaction if the cash and/or the securities are not available.[118] These rules and controls help address the principal risk inherent in settling linked obligations.

Multiple commenters noted the potential gains in efficiency to be had by U.S. Participants if EB were to expand its current services to include U.S. Equity Securities. One commenter cited EB's real-time management of collateral inventory as being integral to reducing operational risk and increasing efficiencies,[119] while another cited positively EB's ability to facilitate the efficient deployment of collateral at a time where new regulatory regimes significantly increase the demand for high-grade assets.[120] The Commission believes that EB's operations, as represented to the Commission, are conducted in a manner that is consistent with the promptness and accuracy requirements under Section 17A of the Exchange Act. This will enable the efficient transfer of assets, which helps protect investors and provides benefits to U.S. market participants.

4. Maintenance of Fair Competition Among Market Participants

The Commission is directed to have due regard for the maintenance of fair competition in the use of its authority under Section 17A of the Exchange Act.[121] One commenter stated that the Modification Application would provide a level playing field between U.S. Participants and non-U.S. participants in the types of U.S. securities they can offer as collateral in the EB–CMS, noting that the use of U.S. Equity Securities as collateral within the EB–CMS is already common among EB's non-U.S. participants in the European Union.[122] Another commenter stated that it did not foresee other providers of collateral management services to be disadvantaged by approval of EB's Modification Application; rather, the commenter expected the Modification Application to be beneficial by expanding the options that participants and their clients have for addressing collateral demands.[123] The Commission notes that approval will reduce the disparity between U.S. Participant and non-U.S. participant utilization of the EB–CMS, but the Commission does not believe EB's proposal will have a direct impact on the current competitive landscape for the provision of settlement of transactions in U.S. Equity Securities for U.S. market participants more generally because Euroclear will not provide settlement for purchase and sale transactions in U.S. Equity Securities. Accordingly, the Commission believes that the Modification Application is consistent with Section 17A of the Exchange Act because it should facilitate fair competition between U.S. Participants and non-U.S. participants, consistent with the public interest, and would not prevent U.S. market participants from using other comparable services that may be (or become) available.

IV. Terms and Conditions of Exemption

This order grants EB an exemption from registration as a clearing agency under Section 17A of the Exchange Act to perform the Clearing Agency Activities described above. The exemption is granted subject to the conditions set forth below, which the Commission believes are necessary and appropriate in light of the statutory requirements of Section 17A. The Commission is including specific conditions to this exemption designed to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions. In the Modification Application, the Commission discussed the origin and purpose of each of these conditions.[124] The conditions are designed to promote coordination, the safeguarding of securities and funds, and fair competition among market participants. The conditions replace and supersede all conditions set forth in the Existing Exemption.

A. Continuation of Conditions Applicable to the U.S. Government Securities Clearing Agency Activities

(1) The average daily volume of eligible U.S. Government Securities processed for U.S. Participants through EB as operator of the Euroclear System may not exceed five percent of the total average daily dollar value of the

[113] *See* Exchange Act Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219, 66253 (Nov. 2, 2012).

[114] *See* 15 U.S.C. 78q–1(a)(1)(A), (B).

[115] *See* 77 FR at 66256.

[116] *See id.*

[117] *See* Paxos letter at 1.

[118] In addition, EB represents that the Euroclear System is a delivery-versus-payment system, which settles instructions between clients with finality of the transfer of securities from the seller to the buyer occurring at the same time as the finality of transfer of funds from the buyer to the seller.

[119] *See* Paxos letter at 2.

[120] *See* SIFMA letter at 2.

[121] *See* 15 U.S.C. 78q–1(a)(2)(A).

[122] *See* SIFMA Letter at 2.

[123] *See* Paxos Letter at 3.

[124] *See* Modification Application Notice, *supra* note 5, at 61280–81.

aggregate volume in eligible U.S. Government Securities.

(2) EB will provide the Commission with quarterly reports, calculated on a twelve-month rolling basis, of: (a) The average daily volume of transactions in eligible U.S. Government Securities for U.S. Participants that are subject to the volume limit; and (b) the average daily volume of transactions in eligible U.S. Government Securities for all Euroclear System participants.

B. Condition Applicable to the U.S. Equities Clearing Agency Activities

EB shall provide to the Commission quarterly reports, calculated on a twelve-month rolling basis, of: (1) The average daily value of U.S. Equity Securities that are held in Collateral Accounts at EB for U.S. Participants and a break-down of the general types of EB collateral agreements in respect of which such value is given as collateral; (2) the average daily value of U.S. Equity Securities that are held in EB's account at DTC relating to inventory management services; and (3) the total value, and a break-down of the general types of EB collateral agreements in respect of which such value is given as collateral, of U.S. Equity Securities that are transferred from Collateral Accounts of U.S. Participants at EB to other Securities Clearance Accounts at EB (other than IMS-Linked Accounts) pursuant to a liquidation of such collateral.

C. Operational Risk Conditions Applicable to the Clearing Agency Activities

(1) Prior to commencing the U.S. Equities Clearing Agency Activities,[125] EB shall demonstrate to the Commission that EB maintains written policies and procedures applicable to those systems that support or are integrally related to the Clearing Agency Activities (the ''Systems'') that, on an ongoing basis, are reasonably designed to:

(a) Establish a robust operational risk-management framework applicable to the Systems with appropriate systems, policies, procedures, and controls to identify, monitor, and manage operational risks;

(b) Clearly define the roles and responsibilities of EB personnel for addressing operational risk (*e.g.,* identify a senior manager responsible for compliance with the operational conditions applicable to the Systems);

(c) Review operational policies, procedures, and controls applicable to the Systems;

(d) Audit the Systems, and test the Systems periodically and at implementation of significant changes;

(e) Clearly define operational reliability objectives for the Systems;

(f) Ensure that the Systems have scalable capacity adequate to handle increasing stress volumes and achieve the Systems service-level objectives;

(g) Establish comprehensive physical and information security policies that address all potential vulnerabilities and threats to the Systems;

(h) Establish a business continuity plan for the Systems that addresses events posing a significant risk of disrupting the Systems' operations, including events that could cause a wide-scale or major disruption in the provision of the Clearing Agency Activities;

(i) Incorporate the use of a secondary site in EB's business continuity plan that is designed to ensure that the Systems can resume operations within two hours following disruptive events; and

(j) Regularly test or otherwise validate EB's business continuity plans; and identify, monitor, and manage the risks that key participants, other financial market infrastructures, and service and utility providers might pose to the Systems' operations in relation to the Clearing Agency Activities.

(2) For purposes of condition C.1, such policies and procedures shall be consistent with current information technology industry standards, which shall be comprised of information technology practices that are widely available to information technology professionals in the financial sector and issued by a widely recognized organization. EB shall inform the Commission of the information technology industry standards that EB has chosen to use, affirm that choice on an annual basis, and provide advance notice of the use of different standards as soon as practicable.

(3) EB shall provide the Commission with an annual update on the status of the items set forth in condition C.1.

(4) EB shall establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure that the Systems operate on an ongoing basis in a manner that complies with the conditions applicable to the Systems and with EB's rules and governing documents applicable to the Clearing Agency Activities.

(5)(a) Upon EB having a reasonable basis to conclude that a disruption, compliance issue, or intrusion of the Systems that impacts, or is reasonably likely to impact, the Clearing Agency Activities has occurred (a ''Systems Event''), EB shall:

(i) Take appropriate corrective action, which shall include, at a minimum, devoting adequate resources to remedy the Systems Event as soon as reasonably practical;

(ii) Notify the Commission of such Systems Event within 24 hours after occurrence;

(iii) Until such time as a Systems Event is resolved and EB's investigation of the Systems Event is closed, provide updates pertaining to such Systems Event to the Commission on a regular basis;

(iv) Within 48 hours after the occurrence of a Systems Event or where EB reasonably determines that such deadline cannot be met and so notifies the Commission, promptly thereafter, submit an interim written notification pertaining to such Systems Event to the Commission containing: (A) A detailed description of: The relevant discovery and duration times, detection, root cause, and remedial actions taken or planned regarding the Systems Event (to the extent known at report time); EB's assessment of the entities (including types of market participants) and EB services affected by the Systems Event; EB's assessment of the impact of the Systems Event on the Participants; and any other pertinent information known by the EB about the Systems Event; and (B) a copy of any information disseminated to EB's U.S. Participants in accordance with EB's notification practices regarding the Systems Event;

(v) Within ten business days after the occurrence of a Systems Event, or where EB reasonably determines that such deadline cannot be met and so notifies the Commission, promptly thereafter, submit a written final report regarding the matters covered in the interim report required under (iv) above to the Commission; and

(vi) For Systems Events characterized as ''Bronze level'' events (*i.e.,* a Systems Event in which the incident is clearly understood, almost immediately under control, involves only one business unit and/or entity, and is resolved within a few hours), in lieu of the reporting in (i) through (v) above, provide on a quarterly basis an aggregated list of Bronze level events.

(b) As used herein: (i) A ''disruption'' means an event in the Systems that

[125] In the Modification Application Notice, this condition stated: ''EB shall demonstrate to the Commission or its designee prior to commencing the U.S. Equities Clearing Agency Activities that EB maintains written policies and procedures applicable to those systems that support or are integrally related to the Clearing Agency Activities (the ''Systems'') that, on an ongoing basis, are reasonably designed to.'' The Commission has modified this condition to improve clarity. In addition, here and below the Commission has removed references to ''or its designee'' because the reference is not necessary.

disrupts, or significantly degrades, the normal operation of the Systems in relation to the Clearing Agency Activities; (ii) a ''compliance issue'' means an event at EB that has caused any System to operate in a manner that does not comply with the applicable conditions or EB's rules and governing documents applicable to the Clearing Agency Activities; and (iii) an ''intrusion'' means any unauthorized entry into the Systems in relation to the Clearing Agency Activities.

(6) EB shall, within 30 calendar days after the end of each quarter, submit to the Commission a report describing completed, ongoing, and planned material changes to the Systems that support or are related to the Clearing Agency Activities during the prior, current, and subsequent calendar quarters, including the dates or expected dates of commencement and completion. EB shall establish reasonable written criteria for identifying a change to the Systems as material and report such changes in accordance with such criteria.

(7) EB shall provide the Commission with: (a) Annually, the audited control report made available to EB's Participants prepared in accordance with internationally accepted standards for assurance reports on controls at a service organization (such as the International Standard on Assurance Engagements (ISAE) Standard No. 3402); (b) annually, copies of those portions of any annual control report provided by EB to its primary Belgian regulator that describes controls applicable to the Systems as used to support or in relation to the Clearing Agency Activities; and (c) copies of agendas, reports and presentation materials relating to the capacity, integrity, resiliency, availability, and security or compliance of the Systems that are provided by EB or its primary Belgian regulator to any committee of regulators that implements the memorandum of understanding among regulators of Euroclear Group's CSD entities that provides for the coordinated and common oversight and supervision of the Euroclear Group.

(8) EB shall make, keep, and preserve at least one copy of all documents relating to its compliance with the operational risk conditions; keep all such documents for a period of not less than five years, the first two years in an easily accessible place (which may be located in the European Union); and upon request of the Commission, promptly furnish to the possession of the Commission copies of any such documents.

D. Additional Conditions Applicable to the Clearing Agency Activities

(1) EB shall provide to the Commission its annual audited financial statements prepared by competent independent audit personnel.

(2) EB shall notify the Commission of any material changes to any service agreement between EB and any other entity that is performing Clearing Agency Activities on behalf of EB if such changes are reasonably expected to materially affect the Clearing Agency Activities.

(3) EB will notify the Commission (a) promptly following termination of any U.S. Participant as a participant in the Euroclear System, (b) promptly following the liquidation by EB of any securities collateral pledged by a U.S. Participant to EB to secure an extension of credit made through the Euroclear System, and (c) promptly following EB becoming aware of the institution of any proceedings to have a U.S. Participant declared insolvent or bankrupt, and will respond to Commission requests for information about any U.S. Participant about whom the Commission has financial solvency concerns, including, for example, a settlement default by a U.S. Participant.

(4) EB shall annually provide to the Commission a report describing: (a) Material changes to the representations made by EB in support of the approval of this Order that would not otherwise require amendment of EB's application for exemption on Form CA–1 in accordance with these conditions; (b) the functioning of EB's policies and procedures for monitoring its own compliance with the conditions of this order regarding the Clearing Agency Activities (and the compliance of any affiliated or third-party service provider referred to in condition D.2); and (c) the management by EB of any conflicts of interest of such affiliated or third-party service provider that EB becomes aware have arisen since the prior report with respect to the performance of the Clearing Agency Activities.

(5) EB shall keep records relating to the Clearing Agency Activities regarding settlement details, account details, service agreements, and service notices sent to U.S. Participants pertaining to the operation of the Clearing Agency Activities, retain such records for a period of not less than five years, the first two years in an easily accessible place (which may be located in the European Union), and upon request of any representative of the Commission promptly furnish, or require its service providers to furnish, copies thereof to the possession of such representative.[126]

(6) EB shall respond to and require its service providers to respond to a request from the Commission for additional information relating to the Clearing Agency Activities and provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to the Clearing Agency Activities. The request for information shall be made and the inspections shall be conducted solely for the purpose of reviewing the Clearing Agency Activities' operations and compliance with the federal securities laws and the terms and conditions in any order exempting EB from registration as a clearing agency with regard to the Clearing Agency Activities.

(7) EB shall file with the Commission amendments to its application for exemption on Form CA–1 if it makes any material change to the Clearing Agency Activities or any change materially affecting the Clearing Agency Activities as summarized in the relevant exemption order, EB's amended Form CA–1 or in any subsequently filed amendments to its Form CA–1 that would make such previously provided information incomplete or inaccurate.

E. Modifications to Exemption

EB is required to file with the Commission amendments to its application for exemption on Form CA–1 if it makes any material change affecting the Clearing Agency Activities—as summarized in this order, in its application on Form CA–1 dated May 9, 2016, or in any subsequently filed amendments to its application on Form CA–1—that would make such previously provided information incomplete or inaccurate.

In addition, the Commission may modify by order the terms, scope, or conditions of EB's exemption from registration as a clearing agency if it determines that such modification is necessary or appropriate in the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Furthermore, the Commission may limit, suspend, or revoke this exemption if it finds that EB has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for

[126] The Commission has modified this condition to clarify that, upon request of any representative of the Commission, EB shall promptly furnish, or require its service providers to promptly furnish, copies of the records described in the condition to the possession of such representative.

the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

V. Conclusion

The Commission believes that the Modification Application demonstrates that EB will have sufficient operational capabilities to facilitate prompt and accurate collateral management services and to support the establishment of linked and coordinated facilities for the settlement of obligations under its collateral management services in support of securities transactions. The Commission also notes that EB's exemption will be subject to conditions that are designed to enable the Commission to monitor EB's operational capacity and safeguards, corporate structure, and ability to operate in a manner to further the purposes of Section 17A of the Exchange Act. Further, the conditions include a robust set of reporting requirements that will allow the Commission to monitor the growth and development of EB's exempted clearing agency activities so that the Commission will be well positioned to evaluate whether and when any modifications to the terms and conditions set forth above are necessary. Therefore, for the reasons discussed throughout this order, the Commission finds that the Modification Application is consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.

It is hereby ordered, pursuant to Section 17A(b)(1) of the Exchange Act, that the application for a modification of EB's exemption from registration as a clearing agency under Section 17A(b)(1) of the Exchange Act filed by EB on May 9, 2016 (File No. 601–01) be, and hereby is, approved within the scope described in this order and subject to the terms and conditions contained in this order.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–30853 Filed 12–21–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15009 and #15010]

Massachusetts Disaster #MA–00069

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of MASSACHUSETTS dated 12/14/2016.

Incident: Ten Alarm Fire.

Incident Period: 12/03/2016.

Effective Date: 12/14/2016.

Physical Loan Application Deadline Date: 02/13/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 09/14/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Middlesex.

Contiguous Counties:

Massachusetts: Essex, Norfolk, Suffolk, Worcester.

New Hampshire: Hillsborough.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.000
Homeowners Without Credit Available Elsewhere	1.500
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	3.125
Non-Profit Organizations With Credit Available Elsewhere	2.500
Non-Profit Organizations Without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15009 5 and for economic injury is 15010 0.

The States which received an EIDL Declaration # are Massachusetts, New Hampshire.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: December 14, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–30878 Filed 12–21–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0434]

Seacoast Capital Partners IV, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Seacoast Capital Partners IV, L.P., 555 Ferncroft Road, Danvers, MA 01923, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Seacoast Capital Partners IV, L.P., proposes to provide debt/equity security financing to Northwest Cascade, Inc., 10412 John Bananola Way E, Puyallup, WA 98374 (''NWC'').

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Seacoast Capital Partners III, L.P. an Associate of Seacoast Capital Partners IV, L.P., owns more than five percent of NWC, and will receive proceeds from this transaction, and therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

December 13, 2016.

Mark L. Walsh,

Associate Administrator for Investment.

[FR Doc. 2016–30872 Filed 12–21–16; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15007 and #15008]

Alabama Disaster #AL–00078

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster

for the State of Alabama dated 12/14/2016.

Incident: Severe Storms with Wind and Flooding.

Incident Period: 11/29/2016 through 11/30/2016.

Effective Date: 12/14/2016.

Physical Loan Application Deadline Date: 02/13/2017.

Economic Injury (Eidl) Loan Application Deadline Date: 09/14/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Jackson.

Contiguous Counties:

Alabama: De Kalb, Madison, Marshall.

Georgia: Dade.

Tennessee: Franklin, Marion.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.000
Homeowners Without Credit Available Elsewhere	1.500
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	3.125
Non-Profit Organizations With Credit Available Elsewhere	2.500
Non-Profit Organizations Without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15007 B and for economic injury is 15008 0.

The States which received an EIDL Declaration # are Alabama, Georgia, Tennessee.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: December 14, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–30875 Filed 12–21–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration (''SBA'') under Section 309 of the Small Business Investment Act of 1958, as amended, and Section 107.1900 of the Small Business Administration Rules and Regulations, SBA by this notice declares null and void the license to function as a small business investment company under the Small Business Investment Company License No. 02/02–0661 issued to DeltaPoint Capital IV (New York), LP.

United States Small Business Administration.

Dated: December 15, 2016.

Mark L. Walsh,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2016–30881 Filed 12–21–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15014 and #15015]

Tennessee Disaster #TN–00099

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4293–DR), dated 12/15/2016.

Incident: Wildfires.

Incident Period: 11/28/2016 through 12/09/2016.

Effective Date: 12/15/2016.

Physical Loan Application Deadline Date: 02/13/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 09/15/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/15/2016, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Sevier.

Contiguous Counties (Economic Injury Loans Only):

Tennessee: Blount, Cocke, Jefferson, Knox.

North Carolina: Haywood, Swain.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.000
Homeowners Without Credit Available Elsewhere	1.500
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	3.125
Non-Profit Organizations With Credit Available Elsewhere	2.500
Non-Profit Organizations Without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 150145 and for economic injury is 150150.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–30871 Filed 12–21–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9821]

Notice of Determinations Culturally Significant Objects Imported for Exhibition Determinations: ''Wild Noise/Ruido Salvaje: Artworks From El Museo Nacional de Bellas Artes, Havana, Cuba'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat.

2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Wild Noise/Ruido Salvaje: Artworks from El Museo Nacional de Bellas Artes, Havana, Cuba,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Bronx Museum of the Arts, New York, New York, from on or about January 28, 2017, until on or about April 30, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–30818 Filed 12–21–16; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36064]

Genesee & Wyoming Inc.—Acquisition of Control Exemption—Providence and Worcester Railroad

On September 1, 2016, Genesee & Wyoming Inc. (GWI), a non-carrier holding company, filed a petition under 49 U.S.C. 10502 and 49 CFR part 1121 for exemption from the provisions of 49 U.S.C. 11323–24 to allow GWI to acquire control of Providence and Worcester Railroad Company (P&W), a Class III railroad. In a decision served September 20, 2016, and published in the **Federal Register** on September 23, 2016 (81 FR 65,692), the Board provided notice of GWI's petition, instituted a proceeding, and set a reply deadline for comments on the petition. The Board received a number of comments in response to the petition.

The Board will grant GWI's petition for exemption, subject to standard labor protective conditions and the condition that GWI will not interfere with the ability of Springfield Terminal Railway (Springfield Terminal) to interchange with CSX Transportation, Inc. (CSXT), in Worcester, Mass.

Background

GWI is a publicly-traded non-carrier holding company that currently controls, through direct or indirect equity ownership, two Class II carriers and 106 Class III carriers operating in the United States. (Pet. 1.) P&W is a Class III carrier based in Worcester, Mass., that owns rail lines and permanent freight easements in Connecticut, Rhode Island, and Massachusetts. (*Id.* at 2.) It also operates on trackage rights in Connecticut, Massachusetts, Rhode Island, and New York. (*Id.*)

In its petition, GWI states that it seeks to acquire control of P&W through a merger between P&W and Pullman Acquisition Sub Inc., a newly-formed, wholly-owned non-carrier subsidiary of GWI.[1] (*Id.*) Upon consummation, P&W will be the surviving entity and will become a wholly-owned subsidiary of GWI. (*Id.*) P&W connects with several railroads, including two GWI subsidiaries: New England Central Railroad, Inc. (NECR), and Connecticut Southern Railroad, Inc. (CSO). (*Id.* at 3.) GWI states that, although there are some commonly-served cities and towns, there are no customers that are served solely by NECR or CSO, on the one hand, and P&W, on the other, and that as such there will be no ''2-to-1 customers'' as a result of the proposed transaction. (*Id.* at 3.) GWI states that it does not contemplate any material changes to P&W's operations, maintenance, or service. (*Id.* at 4.)

GWI also states that P&W and NECR are part of the ''Great Eastern Route'' strategic alliances. According to GWI, the Great Eastern alliances furnish P&W with pricing authority for service with Canadian National Railway Company (CN) through an arrangement by which NECR provides haulage for P&W between East Alburg, Vt. and Willimantic, Conn. on certain contractually-agreed commodities. GWI states that P&W expanded the Great Eastern Route by entering into an additional strategic alliance with Vermont Rail Systems (VRS), which furnishes P&W with pricing authority for service with Canadian Pacific Railway Limited (CP), through an arrangement by which VRS and NECR provide haulage for P&W between Whitehall, N.Y. and Willimantic, Conn. on certain contractually-agreed commodities. (*Id.* at 3.) GWI states that its present intention is to keep these strategic alliances, and the connections with CN and CP, in place. (*Id.*)

Discussion and Conclusions

Statutory Analysis

The acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires approval by the Board pursuant to 49 U.S.C. 11323(a)(5). Under section 10502(a), however, we must exempt a transaction or service from regulation if we find that: (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either the transaction or service is limited in scope, or regulation is not needed to protect shippers from the abuse of market power.

In this case, an exemption from the prior approval requirements of sections 11323–24 is consistent with the standards of section 10502. Detailed scrutiny of the proposed transaction through an application for review and approval under sections 11323–24 is not necessary here to carry out the RTP. Approval of the transaction will result in a change in ownership of P&W with no lessening of competition. An exemption will promote the RTP by minimizing the need for federal regulatory control over the transaction, section 10101(2); ensuring the development and continuation of a sound rail transportation system that will continue to meet the needs of the public, section 10101(4); fostering sound economic conditions in transportation, section 10101(5); encouraging efficient management, section 10101(9); and providing for the expeditious resolution of this proceeding, section 10101(15). Other aspects of the RTP will not be adversely affected.

Nor is detailed scrutiny of the proposed transactions necessary to protect shippers from an abuse of market power. According to GWI, no shipper will lose any rail options, and operations will not materially change. (Pet. 9.) Although P&W connects with NECR and CSO, GWI states that P&W also connects directly with a Class I

[1] In its petition, GWI states that it anticipates closing the transaction in the fourth quarter of 2016. (Pet. 5.) GWI states that, in the event it does not have approval from the Board by the time its closing conditions have been met, it intends to close the transaction into a voting trust. On October 31, 2016, GWI submitted an executed Voting Trust Agreement pursuant to 49 CFR 1013.3 for receipt of the voting stock of P&W.

carrier (CSXT) and indirectly with three other Class I carriers (CP and CN through the strategic alliances, and with Norfolk Southern Railway Company (NSR) through NSR's affiliate, Pan Am Southern, LLC). (*Id.* at 10.) P&W also connects to Pan Am Railways, Inc., New York & Atlantic Railway Company, and Housatonic Railroad Company, Inc., all regional and shortline railroads. (*Id.*) In addition, GWI states that there will be no 2-to-1 shippers as a result of the merger. (*Id.*) Accordingly, based on the record, the Board finds that this transaction does not shift or consolidate market power; therefore, regulation is not necessary to protect shippers from the abuse of market power.[2]

Comments and Conditions

Many of the commenters support the petition and do not seek any conditions.[3] Other commenters support the petition but request conditions, or express general reservations about the transaction. We address those below.

Passenger Excursion

Several commenters support the petition, but ask the Board to condition granting the petition on GWI's involvement in passenger excursions run by the Blackstone Valley Tourism Council (BVTC)[4] and/or sought to be run by the Boston Surface Railroad Company (BSRC).[5] The comments regarding these passenger services vary, but, generally, the commenters[6] request that the Board require that GWI continue servicing BVTC and continue P&W's negotiations with BSRC.

GWI states that, in the past, P&W and BVTC have made arrangements for service on a year-by-year basis. (GWI Rebuttal 5.) GWI states that P&W will fulfill all current agreements with BVTC, negotiate similar agreements for 2017, and, as P&W has previously done, review further plans for passenger excursion service on a year-to-year basis after that. (*Id.* at 7.) GWI also states that there is currently a memorandum of understanding between BSRC and P&W that includes a commitment to negotiate in good faith. (*Id.* at 5–6.)

The Board will not impose a condition relating to BVTC or BSRC. The Board has authorized BSRC to offer passenger rail service on any rail line where P&W will allow the service. *Bos. Surface R.R.—Pet. for Partial Exemption from 49 U.S.C. Subtitle IV,* FD 36043 (STB served Sept. 15, 2016). However, authority from the Board is permissive only, and in order to exercise that authority a carrier must obtain the property or contractual right to do so under state law, which is not within the Board's purview. *See Ohio River Partners LLC—Acquis. Exemption—Hannibal Dev., LLC,* FD 35984, slip op. at 3 (STB served Apr. 1, 2016). A condition requiring GWI to negotiate with BSRC is therefore inappropriate. In any event, GWI has stated that it will continue to negotiate in good faith with BSRC and BVTC. (GWI Rebuttal 7.)

Springfield Terminal

Springfield Terminal filed a comment regarding its ability to interchange traffic with CSXT at Barbers Station in Worcester, Mass. (Springfield Terminal Comment 1.) Springfield Terminal states that GWI has agreed that it will not take or fail to take action that would adversely impact Springfield Terminal's ability to interchange traffic with CSXT at Barbers Station. (*Id.*) Based on this representation, Springfield Terminal states that it fully supports the petition.

Springfield Terminal also notes that GWI agreed to have Board approval conditioned on GWI's commitment as reflected in Springfield Terminal's letter, and in its rebuttal GWI confirms that its commitment can be entered as a Board-imposed condition. (GWI Rebuttal 3.) Accordingly, the Board will impose a condition requiring that GWI will not take or fail to take any actions that would adversely impact the ability of Springfield Terminal to interchange traffic with CSX Transportation, Inc. at Barbers Station in Worcester, Massachusetts in violation of applicable law or the P&W Grant of Trackage Rights, as amended, dated June 30, 1989.

Other Concerns

The Massachusetts Department of Transportation (MassDOT) and American Rock Salt (ARS) filed comments expressing reservations regarding the transaction.

MassDOT states that it takes no position concerning the competition aspect of GWI's petition, but it notes its interest in P&W continuing its current high standards of track maintenance under a GWI regime. It also indicates that service over a nearby GWI subsidiary line has deteriorated, leading to passenger train service disruption. (MassDOT Comment 1.) MassDOT seeks GWI's assurance that the P&W merger ''will not compromise or delay steps that GWI will need to take going forward to restore Amtrak service on another GWI railroad . . . .'' (*Id.*) MassDOT, however, does not specifically ask the Board to impose any conditions.

ARS states that it is a shipper that receives service from several other GWI subsidiaries. It states that GWI's growth over the past 20 years has led to ARS being captive to GWI's rate structures, which impacts its market share. Although ARS has raised a number of concerns regarding service from other GWI subsidiaries, ARS does not ask that a specific condition be placed on this transaction. (*See generally* ARS Comment.)

While the Board takes seriously the concerns expressed by MassDOT and ARS, neither party has suggested a condition or identified any harm arising

[2] As there is no evidence that regulation is needed to protect shippers from the abuse of market power, we do not need to determine whether the transaction is limited in scope. *See* 49 U.S.C. 10502(a).

[3] Supporting comments were filed by: Allnex USA Inc.; Atlantic Forest Products; Baldwin Logistics Group, Inc.; BB&S Treated Lumber of New England; Can-Am Trading & Logistics, LLC; Connecticut Department of Transportation; Cushman Lumbar Company, Inc., CWPM, LLC; Delaware Express Co.; Dennison Lubricants, Inc.; Eagle Logistics Group, LLC; Gateway Terminal; Greater Boston Transload, LLC; Intratransit Container, Inc.; Kloeckner Metals; Logistec USA; Mann Distribution LLC; Maple Leaf Distribution Service, Inc.; Maine Department of Transportation; New Hampshire Department of Transportation; Northeast Treaters, Inc.; Resource Recovery, LLC; Rymes Heating Oil & Propane; Safe Road Services, LLC; Saltine Warrior, Inc.; Stella-Jones Corporation; Superior Plastics Extrusion Co. Inc.; T-Branch, LLC; Tunnel Hill Partners, LP; Univar; Vermont Rail System; and Vermont Agency of Transportation.

[4] The record contains little information about the BVTC, other than that it conducts a ''Polar Express'' excursion and serves over 20,000 passengers annually. (*See* State Rep. Stephen M. Casey Comment 1.)

[5] BSRC is a privately funded and closely held company, established to address the growing demand for quality alternatives to driving for commuters between tightly coupled metropolitan markets. BSRC has selected Worcester and Providence as the first city pair for its pilot passenger rail program and has been in negotiations with P&W to host this proposed service. (BSRC Reply 1.)

[6] Comments were submitted by: BSRC; the Honorable Lisa Baldelli-Hunt, Mayor, City of Woonsocket, Rhode Island; the Honorable Stephen M. Casey, State Representative, State of Rhode Island and Providence Plantations; the Honorable Harriette L. Chandler, State Senator, Commonwealth of Massachusetts; the Honorable Marc A. Cote, State Senator, State of Rhode Island and Providence Plantations; John Eno; the Honorable James R. Langevin and the Honorable David N. Cicilline, United States Representatives, Rhode Island; Massachusetts Bay Railroad Enthusiasts, Inc.; the Honorable James P. McGovern, United States Representative, Massachusetts; the Honorable Michael A. Morin, State Representative, State of Rhode Island and Providence Plantations; the Honorable David K. Muradian, Jr., State Representative, Commonwealth of Massachusetts; National Association of Railroad Passengers; the Honorable James J. O'Day, State Representative, Commonwealth of Massachusetts; the Honorable Robert D. Phillips, State Representative, State of Rhode Island and Providence Plantations; Michael E. Traynor, Chief Development Officer, City of Worcester, Massachusetts. BSRC also submitted a letter from Peter Alviti, Jr., Director of the Rhode Island Department of Transportation, expressing general support for BSRC's passenger rail service.

from the transaction that would necessitate imposing a condition. The Board expects, however, that GWI will work with MassDOT and ARS to help address any unforeseen service impacts, should they arise, following the transaction's approval.[7]

Labor

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Therefore, the Board will impose a condition specifying that any employees adversely affected by this transaction will be protected by the conditions set forth in *New York Dock Railway—Control—Brooklyn Eastern District Terminal* (*New York Dock*), 360 I.C.C. 60 (1979).

GWI, acknowledging that *New York Dock* applies, seeks Board confirmation that it need not commence negotiations or consummate implementing agreements prior to the consummation of the transaction with P&W. (Pet. 10–11.) The Transportation Communications Union/IAM, AFL–CIO (TCU/IAM) and the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART–TD) submitted comments disagreeing with GWI's position, arguing that GWI must give notice and negotiate an implementing agreement prior to consummation of the transaction. (*See* TCU/IAM Comment 3, 5–6; SMART–TD Comment 3–5.)

New York Dock requires a railroad to give notice of ''proposed changes to be effected by [a] transaction'' when a railroad is ''contemplating a change or changes in its operations, services, facilities, or equipment as a result of a transaction'' that may affect employees. 360 I.C.C. at 77. The requirement under *New York Dock* to provide such notice presumes, however, that the carrier is capable of making a ''full and adequate statement'' of the expected labor changes before the transaction is consummated. *Norfolk S. Ry—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC* (*Pan Am S.*), FD 35147, slip op. at 16–17 (STB served Mar. 10, 2009) (''Because we see no basis for negotiation of an implementing agreement until Applicants decide to implement labor changes that are related to the Transaction, we will not require that Applicants commence negotiations now.'').

In its petition, GWI states that it has not yet determined whether or which employees may be adversely affected, but acknowledges that it will be required to give 90-days' notice, and negotiate, before making changes in operations, services, facilities, or equipment. (Pet. 11.) Further, in its rebuttal,

> GWI specifically confirms that post-closing, P&W does not intend to terminate or displace any P&W covered employees as a result of the proposed transaction. P&W will continue to honor all current [collective bargaining agreements (CBAs)], and to negotiate all expired CBAs in good faith. For the foreseeable future, there will be no adverse effect on P&W covered employees because work will continue to be performed under existing CBAs by the same P&W covered employees who are currently performing the work.

(GWI Rebuttal 9).

The Board will hold GWI to the representations regarding labor protection that it has made on the record in this proceeding. Accordingly, GWI will be required to proceed in good faith under the notification and negotiation provision of Article I, section 4 of the *New York Dock* conditions before implementing employment changes but it need not commence those negotiations until it is capable of making a full and adequate statement of the expected changes. *See Pan Am S.,* FD 35147, slip op. at 16–17.[8]

Environmental and Historical Reporting

This transaction is categorically excluded from environmental review under 49 CFR 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

Expedited Action

GWI requests expedited action on its petition for exemption. (Pet. 12; *see generally* GWI Letter, Dec. 7, 2016.) It seeks action on or before the date P&W shareholder approval is obtained, and in the event that such approval is not obtained before shareholder approval, expedited action to avoid a prolonged period of interim control of operations via a voting trust. Based on the record, the Board finds GWI's request to be reasonable. Accordingly, our grant of the exemption will be effective immediately.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts GWI's acquisition of control of P&W from the prior approval requirements of sections 11323–24 subject to the employee protective conditions in *New York Dock Railway—Control—Brooklyn Eastern District Terminal,* 360 I.C.C. 60 (1979).

2. The exemption is further conditioned on GWI's assurance that it will not take or fail to take any actions that would adversely impact the ability of Springfield Terminal to interchange traffic with CSX Transportation, Inc. at Barbers Station in Worcester, Massachusetts in violation of applicable law or the P&W Grant of Trackage Rights, as amended, dated June 30, 1989.

3. Notice will be published in the **Federal Register**.

4. This exemption will be effective December 16, 2016.

[7] The Board reminds interested parties that they may contact the Board's Rail Customer and Public Assistance Program (RCPA) if they believe a rail carrier is not providing adequate service. The RCPA Program provides informal assistance on a wide range of matters, including informal dispute resolution through mediation. The RCPA may be reached at (866) 254–1792; faxing to (202) 245–0461; or by email at *rcpa@stb.gov.*

[8] TCU/IAM and SMART–TD cite other cases in support of their position that *New York Dock* negotiations must occur prior to the consummation of a consolidation transaction. The Board, however, finds these cases unpersuasive. First, TCU/IAM cites *Norfolk Southern Railway—Acquisition & Operation—Certain Rail Lines of the Delaware & Hudson Railway* (*Delaware & Hudson*), FD 35873 (STB served May 15, 2015). (TCU/IAM Comment 2.) The labor discussions in *Delaware & Hudson,* however, focus almost entirely on how to categorize the underlying transaction and what level of labor protection applies. *Delaware & Hudson,* FD 35873, slip op. at 28 (STB served May 15, 2015). Here, there is no dispute that *New York Dock* protections apply (*see* Pet.; TCU/IAM Comment; SMART–TD Comment). Thus, *Delaware & Hudson* is inapposite.

Next, SMART–TD points to *R.J. Corman Railroad/Memphis Line—Acquisition—CSX Transportation Line Between Warwick & Uhrichville,* FD 31388 (ICC served Mar. 2, 1989). (SMART–TD Comment 3.) In that case, however, CSXT acknowledged that some of its employees would be adversely affected, which is not the case here. *R.J. Corman R.R.,* slip op. at 2.

SMART–TD also challenges GWI's reliance on *Atlantic Richfield Co. & Anaconda Co.—Control—Butte, Anaconda & Pacific Railway & Tooele Valley Railroad,* 5 I.C.C. 2d 934 (1989), and *Mid Michigan Railroad—Lease & Operation Exemption—Missouri Pacific Railroad,* FD 31646 (ICC served Aug. 17, 1990), though neither case is cited by GWI. (SMART–TD Comment 4.) *Atlantic Richfield* states that minimum *New York Dock* protections are warranted even when assurances are made that there will be no adverse effects to employees. *Atlantic Richfield,* 5 I.C.C. 2d at 942 n.9. Here, however, GWI is not suggesting that the *New York Dock* requirements do not apply. Finally, *Mid Michigan* examines the differing requirements between *New York Dock* and *New York Dock* as modified by *Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation, Inc.,* 6 I.C.C. 2d 799 (1990), a discussion not at issue here. *See generally Mid Michigan,* FD 31646.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2016–30843 Filed 12–21–16; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 290 (Sub-No. 5) (2017–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board approves the first quarter 2017 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter 2017 RCAF (Unadjusted) is 0.888. The first quarter 2017 RCAF (Adjusted) is 0.373. The first quarter 2017 RCAF–5 is 0.353.

DATES: *Effective Date:* January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site, *http://www.stb.gov.* Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Decided: December 19, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Marline Simeon,

Clearance Clerk.

[FR Doc. 2016–30867 Filed 12–21–16; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2016–0028]

Privacy Act of 1974; System of Records

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of new, modified and rescinded systems of records and request for comments.

SUMMARY: As part of a comprehensive review of agency practices related to the disclosure of records and information, the Office of the United States Trade Representative (USTR) is updating both its systems of records and implementing rule under the Privacy Act of 1974 (Privacy Act). This notice concerns updates to USTR's Privacy Act system of records notices (SORNs). Elsewhere in this issue of the **Federal Register**, USTR is publishing a proposed rule that would update the agency's Privacy Act regulation. The rule describes how individuals can find out if a USTR system of records contains information about them and, if so, how to access or amend a record.

DATES: We must receive your written comments on or before January 23, 2017. Unless USTR makes changes based on comments or otherwise, the changes made by this notice will become final and effective February 6, 2017.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* The docket number for this notice is USTR–2016–0028. USTR invites comments on all aspects of the notice, and will revise the language as appropriate after taking all timely comments into consideration. Copies of all comments will be available for public viewing at *www.regulations.gov* upon completion of processing. You can view a submission by entering the docket number USTR–2016–0028 in the search field at *http://www.regulations.gov.* We will post comments without change and will include any personal information you provide, such as your name, mailing address, email address, and telephone number.

FOR FURTHER INFORMATION CONTACT: Janice Kaye, Monique Ricker or Melissa Keppel, Office of General Counsel, United States Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington DC 20509, *jkaye@ustr.eop.gov; mricker@ustr.eop.gov; mkeppel@ustr.eop.gov;* 202–395–3150.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the requirements of the Privacy Act, USTR is publishing a notice of changes to its systems of records. *See* 5 U.S.C. 552a(e)(4) and (11). A system of records can be any collection or grouping of paper, electronic or other records an agency controls about individuals. It does not include agency records about businesses or about individuals who are not U.S. citizens or lawfully admitted aliens. To be a Privacy Act system of records, the agency must retrieve records about an individual from the system by that individual's name or by some other identifier assigned to that individual, such as the individual's Social Security number or telephone number. The record also must be about that individual. If a record is only about someone or something else (*e.g.,* about a business), it is not a record about that individual.

II. Rescinded SORNs

USTR is rescinding the following systems of records:

System Number and Name: USTR–1 Applicants for Employment.

System Number and Name: USTR–2 Correspondence Files.

System Number and Name: USTR–3 General Financial Records.

System Number and Name: USTR–4 Payroll Records.

We are rescinding the following SORNs because the information described in each notice is covered by a Government-wide SORN:

- USTR–1 Applicants for Employment
- USTR–3 General Financial Records
- USTR–4 Payroll Records

We are rescinding USTR–2, the SORN that covered correspondence files because USTR no longer maintains these records.

III. Modified and New SORNs

We are renumbering the SORN covering dispute settlement panelist rosters from USTR–6 to USTR–1. We also are updating the content of this SORN. We are adding two new SORNs, USTR–2 covering information collected from individuals interested in becoming trade advisory committee members, and USTR–3 covering Freedom of Information Act (FOIA) and Privacy Act records.

SYSTEM NUMBER AND NAME:

USTR–1 Dispute Settlement Panelists Roster.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION/MANAGER:

Office of the US Trade Representative, Office of General Counsel, 600 17th Street NW., Washington DC 20508. The mailing address is: Office of the US Trade Representative, Office of General Counsel, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington DC 20509. The Office of General Counsel manages the recruitment and selection of individuals who are interested in being selected to

serve on a dispute settlement panel or other similar entity established under trade agreements to resolve trade disputes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Annex 1901.2 of the North American Free Trade Agreement (NAFTA), section 402 of the NAFTA Implementation Act, as amended (19 U.S.C. 3432), section 123(b) Uruguay Round Agreement Act (19 U.S.C. 3533(b)).

PURPOSE(S) OF THE SYSTEM:

To recruit and select appropriately qualified individuals to serve as members of a dispute settlement panel or other similar entity to resolve trade disputes. By applying for a position, an individual is deemed to consent to sharing the application with foreign governments, the World Trade Organization and the NAFTA Secretariat, to the extent the records are relevant and necessary to determining eligibility or assessing qualifications for service on a particular panel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for selection to serve on a dispute settlement panel or other similar entity established under trade agreements to resolve trade disputes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications from potential and appointed advisory dispute settlement panelists. The records typically include correspondence with the candidate/panelist, a resume/CV, United States citizenship status, information regarding registration under the Foreign Agents Registration Act (22 U.S.C. 611), lists of publications and speeches, descriptions of professional affiliations, lists of clients, information regarding substantive qualifications in trade law, and the names of references. Additional records may include disclosure forms with information about financial interests, affiliations, and the identity of clients of the candidate/panelist or his/her firm necessary to determine if s/he has a potential conflict-of-interest with respect to service on a specific panel.

RECORD SOURCE CATEGORIES:

The individual applying for or serving as a dispute settlement panelist.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

We may disclose records or information contained in the records, as a routine use to:

1. Any federal agency if the records are relevant and necessary to carry out that agency's authorized functions and to the decision on a matter, including, but not limited to, determining eligibility or assessing qualifications for service on a particular panel.

2. The legal representative of USTR or another federal agency, including the US Department of Justice, or other retained counsel, when USTR or any of its employees are a party to or have a significant interest in litigation or an administrative proceeding.

3. A court, magistrate, administrative tribunal, or alternative dispute resolution mediator in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation or settlement negotiations or in connection with criminal proceedings, when the information is relevant and necessary and USTR or any of its employees are a party to or have a significant interest in the proceeding.

4. The appropriate federal, state, local, territorial, tribal or foreign law enforcement authority or other appropriate entity responsible for investigation, enforcement, implementation or prosecution, where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law whether criminal, civil or regulatory in nature.

5. A congressional office in response to an inquiry made on behalf or at the request of the subject individual.

6. Any source, including a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, but only to the extent necessary to obtain information relevant to the appointment or retention of an individual.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in file folders and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are organized by the name of the panel and the candidate/member name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained for six years and then destroyed.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

File folders are maintained in cabinets in secure facilities and access to the files is restricted to individuals whose role requires use of the records. The computer servers in which records are stored are located in secure, guarded facilities. Individuals accessing the system are authenticated using encrypted certificates and data stored to the database may require digital signatures.

RECORD ACCESS PROCEDURES:

In accordance with the procedures set forth in 15 CFR part 2004, subpart C, direct inquires in writing to the USTR Privacy Act Office. Heightened security may delay mail delivery. To avoid mail delays, we strongly suggest that you email your request to *PRIVACY@ustr.eop.gov.* Our mailing address is: Privacy Act Office, Office of the US Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington DC 20509. To make sure that the Privacy Act Office receives your request without delay, you should include the notation ''Privacy Act Request'' in the subject line of your email or on the front of your envelope and also at the beginning of your request.

CONTESTING RECORD PROCEDURES:

See record access procedures.

NOTIFICATION PROCEDURES:

See record access procedures.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

66 FR 59837 (Nov. 30, 2001).

SYSTEM NUMBER AND NAME:

USTR–2 Trade Advisory Committee Members and Applicants.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION/MANAGER:

Office of the US Trade Representative, Office of Intergovernmental Affairs and Public Engagement, 600 17th Street NW., Washington DC 20508. The mailing address is: Office of the US Trade Representative, Office of Intergovernmental Affairs and Public Engagement, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington DC 20509. The Office of Intergovernmental Affairs and Public Engagement (IAPE) administers the trade advisory committee system for the Office of the US Trade Representative (USTR). Among other things, IAPE recruits individuals to serve as committee members and manages the individuals who are appointed to serve on the committees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

19 U.S.C. 2155.

PURPOSE(S) OF THE SYSTEM:

To ensure that individuals who apply to become and who are appointed to serve as a member of a trade advisory committee meet all of the eligibility requirements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for selection to serve as a trade advisory committee member.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications from potential and appointed advisory committee members. The records typically include correspondence with the applicant/member, a resume/CV, United States citizenship status, information regarding registration under the Foreign Agents Registration Act (22 U.S.C. 611), and descriptions of professional affiliations.

RECORD SOURCE CATEGORIES:

The individual applying for or serving as a trade advisory committee member; USTR personnel assigned to review applications; and other agencies or entities that play a role in determining eligibility or assessing qualifications for service on a particular committee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

We may disclose records or information contained in the records, as a routine use to:

1. Any federal agency if the records are relevant and necessary to carry out that agency's authorized functions and to the decision on a matter, including, but not limited to, determining eligibility or assessing qualifications for service on a particular committee.

2. The legal representative of USTR or another federal agency, including the US Department of Justice, or other retained counsel, when USTR or any of its employees are a party to or have a significant interest in litigation or an administrative proceeding.

3. A court, magistrate, administrative tribunal, or alternative dispute resolution mediator in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation or settlement negotiations or in connection with criminal proceedings, when the information is relevant and necessary and USTR or any of its employees are a party to or have a significant interest in the proceeding.

4. A congressional office in response to an inquiry made at the request of the subject individual.

5. Any source, including a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, but only to the extent necessary to obtain information relevant to the appointment or retention of an individual.

6. The appropriate federal, state, local, territorial, tribal or foreign law enforcement authority or other appropriate entity responsible for investigation, enforcement, implementation or prosecution, where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law whether criminal, civil or regulatory in nature.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in file folders and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are organized by the name of the committee and the applicant/member name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained for the duration of the charter of the committee to which the individual has applied and then destroyed.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

File folders are maintained in cabinets in secure facilities and access to the files is restricted to individuals whose role requires use of the records. The computer servers in which records are stored are located in secure, guarded facilities. Individuals accessing the system are authenticated using encrypted certificates and data stored to the database may require digital signatures.

RECORD ACCESS PROCEDURES:

In accordance with the procedures set forth in 15 CFR part 2004, subpart C, direct inquires in writing to the USTR Privacy Act Office. Heightened security may delay mail delivery. To avoid mail delays, we strongly suggest that you email your request to *PRIVACY@ustr.eop.gov.* Our mailing address is: Privacy Act Office, Office of the US Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington DC 20509. To make sure that the Privacy Act Office receives your request without delay, you should include the notation ''Privacy Act Request'' in the subject line of your email or on the front of your envelope and also at the beginning of your request.

CONTESTING RECORD PROCEDURES:

See record access procedures.

NOTIFICATION PROCEDURES:

See record access procedures.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

SYSTEM NUMBER AND NAME:

USTR–3 Freedom of Information Act and Privacy Act Records.

SECURITY CLASSIFICATION:

Certain responsive records may be classified as Confidential Foreign Government Information pursuant to section 1.4(b) of Executive Order 13526.

SYSTEM LOCATION/MANAGER:

Office of the US Trade Representative, FOIA/Privacy Office, 600 17th Street NW., Washington DC 20508. The mailing address is: Office of the US Trade Representative, FOIA/Privacy Office, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington DC 20509.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Office of the US Trade Representative (USTR) established and maintains the system pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101, to implement the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Privacy Act of 1974 (Privacy Act), 5 U.S.C. 552a.

PURPOSE(S) OF THE SYSTEM:

To enable USTR to process requests and administrative appeals under the FOIA and the Privacy Act. To participate in litigation regarding agency action on such requests and appeals.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses all individuals who submit requests and appeals to USTR under the FOIA and the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records created or compiled in response to FOIA and Privacy Act requests and administrative appeals, including: the original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and, in some instances, copies of requested records and records under administrative appeal.

RECORD SOURCE CATEGORIES:

The individuals who submit initial requests and administrative appeals pursuant to the FOIA and the Privacy

Act; the USTR records compiled to respond to requests and appeals; USTR personnel assigned to handle requests and appeals; other agencies or entities that have referred requests concerning USTR records, or that have consulted with USTR regarding the handling of particular requests; submitters or subjects of records or information that have provided assistance to USTR in making access or amendment determinations; and The National Archives and Records Administration (NARA), Office of Government Information Services (OGIS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

We may disclose records or information contained in the records, as a routine use to:

1. A federal, state, local or foreign agency or entity for the purpose of consulting with that agency or entity to enable USTR to make a determination as to the propriety of access to or correction of information, or for the purpose of verifying the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment of information.

2. A federal agency or entity that furnished the record or information for the purpose of permitting that agency or entity to make a decision as to access to or correction of the record or information, or to a federal agency or entity for purposes of providing guidance or advice regarding the handling of particular requests.

3. A submitter or subject of a record or information in order to assist USTR in making a determination as to access or amendment.

4. OGIS, to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the FOIA, and to facilitate OGIS' offering of dispute resolution services to resolve disputes between persons making FOIA requests and administrative agencies.

5. A congressional office in response to an inquiry made on behalf or at the request of the subject individual.

6. The legal representative of USTR or another federal agency, including the US Department of Justice, or other retained counsel, when USTR or any of its employees are a party to or have a significant interest in litigation or an administrative proceeding.

7. A court, magistrate, administrative tribunal, or alternative dispute resolution mediator in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation or settlement negotiations or in connection with criminal proceedings, when the information is relevant and necessary and USTR or any of its employees are a party to or have a significant interest in the proceeding.

8. The appropriate federal, state, local, territorial, tribal or foreign law enforcement authority or other appropriate entity responsible for investigation, enforcement, implementation or prosecution, where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law whether criminal, civil or regulatory in nature.

9. NARA for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in file folders and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are organized by the number assigned to the request or appeal. USTR can search the electronic database by the name of the requester or appellant.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with NARA's General Records Schedule 14.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

File folders are maintained in cabinets in secure facilities and access to the files is restricted to individuals whose role requires use of the records. The computer servers in which records are stored are located in secure, guarded facilities. Individuals accessing the system are authenticated using encrypted certificates and data stored to the database may require digital signatures.

RECORD ACCESS PROCEDURES:

In accordance with the procedures set forth in 15 CFR part 2004, subpart C, direct inquires in writing to the USTR Privacy Act Office. Heightened security may delay mail delivery. To avoid mail delays, we strongly suggest that you email your request to *PRIVACY@ustr.eop.gov.* Our mailing address is: Privacy Act Office, Office of the US Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington DC 20509. To make sure that the Privacy Act Office receives your request without delay, you should include the notation ''Privacy Act Request'' in the subject line of your email or on the front of your envelope and also at the beginning of your request.

CONTESTING RECORD PROCEDURES:

See record access procedures.

NOTIFICATION PROCEDURES:

See record access procedures.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

Janice Kaye,

Chief Counsel for Administrative Law, Office of the U.S. Trade Representative.

[FR Doc. 2016–30496 Filed 12–21–16; 8:45 am]

BILLING CODE 3290–F7–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0210]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 22 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted November 22, 2016. The exemptions expire on November 22, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On October 20, 2016, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (81 FR 72664). That notice listed 22 applicants' case histories. The 22 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 22 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 22 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, cataract, enucleation, glaucoma, macular atrophy, macular scar, maculopathy, optic atrophy, optic neuropathy, prosthetic eye, retinal detachment, and retinal scar. In most cases, their eye conditions were not recently developed. Fourteen of the applicants were either born with their vision impairments or have had them since childhood.

The 8 individuals that sustained their vision conditions as adults have had it for a range of 3 to 36 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 22 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging for 3 to 52 years. In the past three years, no drivers were involved in crashes and no drivers were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the October 20, 2016 notice (81 FR 72664).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex,

geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 22 applicants, no drivers were involved in crashes and no drivers were convicted of a moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 22 applicants listed in the notice of October 20, 2016 (81 FR 72664).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 22 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received two comments in this proceeding. An anonymous commenter stated that they believe the drivers should not be granted the exemptions, citing safety concerns related to their vision loss. The basis for granting exemptions is explained in Section IV of this document, and FMCSA has determined that all drivers listed in this document meet the criteria required for an exemption. Deb Carlson stated that Derrick P. Moore currently holds an intrastate exemption in Minnesota, and that James F. McLaughlin was involved in a motor vehicle crash and cited for an equipment violation in 2016. The motor vehicle crash was in Mr. McLaughlin's personal vehicle and not a CMV. The equipment violation was not a moving violation. Therefore, neither of these incidents are disqualifying factors for obtaining a vision exemption.

IV. Conclusion

Based upon its evaluation of the 22 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 49 CFR 391.64(b):

Gary A. Behrends (NE)
Harry R. Brewer (TN)
Johnnie B. Bush (MS)
Nathan J. Bute (IN)
Gary L. Cox (KY)
Kevin J. Embrey (IL)
Peter J. Faber (NE)
Ricky L. Gillum (OH)
Johnny E. Hill (AL)
Justin A. Hooper (MO)
John R. Horst (PA)
Robert E. Kelley, Jr. (WA)
David L. Manktelow (MA)
James F. McLaughlin (MN)
Derrick P. Moore (MN)
Richard L. Moores (CO)
Brian T. Morrison (MO)
Tad W. Sexsmith (WA)
Dennis M. Varga, Jr. (OH)
Michael J. Weber (NJ)
Mark B. Wilmer (VA)
Hezekiah Woodrup Sr. (MD)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: December 8, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–30831 Filed 12–21–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257, Notice No. 84]

Railroad Safety Advisory Committee; Notice of Meeting Postponement

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: FRA announces the postponement of the fifty-seventh meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process.

DATES: The RSAC meeting scheduled to be held on Thursday, January 26, 2017 is postponed.

FOR FURTHER INFORMATION CONTACT: Kenton Kilgore, RSAC Administrative Officer/Coordinator, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6286; or Robert Lauby, Associate Administrator for Railroad Safety and Chief Safety Officer, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6474.

SUPPLEMENTARY INFORMATION: Under Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), FRA is giving notice of a postponed meeting of the RSAC. The RSAC meeting scheduled to be held on Thursday, January 26, 2017, at the National Association of Home Builders, National Housing Center, located at 1201 15th Street NW., Washington, DC, is postponed and will be rescheduled via another **Federal Register** Notice.

The RSAC was established to provide advice and recommendations to FRA on railroad safety matters. The RSAC is composed of 59 voting representatives from 38 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, and the Federal Transit Administration. The diversity of the RSAC ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the RSAC Web site for details on prior RSAC activities and pending tasks at *http://rsac.fra.dot.gov/*. Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740), for additional information about the RSAC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–30813 Filed 12–21–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 23, 2017.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 8, 2016.

Donald Burger,

Chief, Office of the Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data				
11110–M		United Parcel Service, Co.	171.8, 175.75	To modify the special permit to authorize certain Class 8 hazardous materials which have no assigned packing group to be transported under the terms of the special permit.
11536–M		Boeing Co.	102, 185, 202, 211, 304A, 62.	To modify the special permit to authorize an additional three part spacecraft shipping container, to authorize the transportation of lithium batteries which exceed the 35 kg weight limitation, and to authorize the transportation of anhydrous ammonia by cargo aircraft.
12102–M		Veolia ES Technical Solutions LLC.	173.56(b)	To modify the special permit to authorize an additional 4.1 material to be transported using the special permit.
14578–M		Nantong CIMC Tank Equipment Co., LTD.		To modify the special permit to authorize an increase in the tank capacity and to remove references to the ASME code which are no longer valid.
16060–M		Dae Ryuk Can Co., LTD.	173.304a(d)(3)(ii)	To modify the special permit to authorize an additional smaller container.
16081–M		Cabela's Incorporated	178.602	To modify the special permit to authorize additional Division 1.4 materials, and no longer require a copy of the special permit must be furnished to the carrier.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20237–N		DSM Nutritional Products, Inc.	172.500(a), 107.601(a)	To authorize the transportation in commerce of bulk packagings containing Division 4.2 materials without displaying placards.
20258–N		Winco Fireworks	173.62(c), 172.301(c)	To authorize the one-way transportation in commerce of Division 1.4G consumer fireworks in non-DOT specification fiberboard non-bulk out packagings under the terms and conditions specified when transported by private, contract or common carrier.
20273–N		ATK Launch Systems, Inc	173.56(a), 172.320	To authorize the one-time, one-way transportation of blasting caps that have not been issued an EX approval.
20274–N		SDV (USA) Inc	172.400, 172.400, 172.300, 172.301.	To authorize the transportation in commerce of certain non-DOT specification containers containing certain Division 2.1, 2.2, 2.3 liquefied and compressed gases and other hazardous materials for use in specialty cooling applications such as satellites and military aircraft.
20283–N		LG Chem	172.101(j), 172.101(j)(1), 172.101(j)(2), 172.101(j)(3), 172.101(j)(4), 172.101(j)(5).	To authorize the transportation in commerce of lithium ion batteries exceeding the 35 Kg maximum weight authorized for transportation by cargo aircraft.
20286–N		National Air Cargo Group, Inc.	173.27(b)(2), 173.27(b)(3), 172.204(c)(3), 175.30(a)(1).	To authorize the transportation in commerce by air of certain explosives which are forbidden to be transported by aircraft.
20290–N		LG Chem	172.101(j)	To authorize the transportation of lithium ion batteries exceed the 35 kg weight limitation on cargo aircraft.
20292–N		Nuance Systems LLC	173.181, 173.302(a), 173.187, 173.201, 173.211.	To authorize the manufacture, marking sale and use of a non specification cylinder used to transport pyrophoric materials in a steel cylinder constructed like a 48 cylinder except as follows: Cylinder head with openings may be attached by bolts and gasket. The cylinder may be constructed without a longitudinal seam. Chemical analysis and mechanical tests of a foreign made material of construction may be performed outside of the United States without further retest when tests results are reviewed by a competent inspector of the U.S. manufacturer and found to meet mechanical and chemical requirements for a specified material of construction.
20295–M		Assured Waste Solutions, LLC.		To modify the special permit to change it from an emergency to permanent authorizing the transportation in commerce of certain Drug Enforcement Agency materials for the purpose of disposal.
20312–N		S.C. Johnson & Son, Inc	173.306(a)(5)(v), 173.306(a)(5)(vi).	To authorize the transportation in commerce of DOT Specification 25 and non-DOT specification plastic non-refillable inside containers, which are leak tested by an automated in-line pressure check in lieu of the tests specified in the Hazardous Materials Regulations.
20318–N		Texas Quality Chemicals Inc.	105.5(b)(3)	SP12412 Toluene, THPS, IPA, Methanol.
20319–N		Texas Quality Chemicals Inc.	105.5(b)(3)	SP11646
20347–N		National Air Cargo Group, Inc.	173.27(b)(2), 173.27(b)(3), 175.30(a), 175.30(a)(1), 172.101, 172.204, 172.204(c)(3).	To authorize the transportation in commerce of certain explosives exceeding the quantity limits authorize for cargo-only aircraft.
20360–N		Scotts Helicopter Service Inc.	173.27(b)(2), 175.30, 175.75, 172.101(j), 172.200, 172.204(c)(3), 172.301(c).	To authorize the transportation in commerce of certain hazardous materials by 14 CFR part 133 Rotocraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations, and certain loading and stowage requirements.
20363–N		Savings Starfish, Ltd	173.154, 173.155	To authorize the transportation in commerce of chemical kit supplies in alternative packaging.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20368–N		Kalitta Air, L.L.C	173.27(b)(2), 173.27(b)(3), 175.30(a)(1).	To authorize the transportation in commerce of certain explosives that are forbidden for transportation by cargo-only aircraft.

[FR Doc. 2016–30573 Filed 12–21–16; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 23, 2017.

ADDRESSES: Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 6, 2016.

Donald Burger,

Chief, Office of the Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data				
20367–N		Keith Huber Corporation	178.345–8(b)(1), 178.345–8(d)(1).	To authorize the transportation in commerce of non-DOT specification cargo tank motor vehicles. (mode 1).
20370–N		American Honda Motor Co., Inc.	173.301(a)(1)	To authorize the transportation in commerce of hydrogen, compressed in non-DOT specification carbon fiber composite tanks. (modes 1, 2, 3, 4)
20374–N		Scana Corporation	173.403, 173.427(b), 173.465(c), 173.465(d).	To authorize the transportation in commerce of SCO–II material which has fixed and non-fixed contamination levels on the inaccessible surface area in excess of that authorized. (mode 1)
20375–N		Department of Defense (Military Surface Deployment & Distribution Command).	173.302(a), 173.304(a)	To authorize the transportation of certain hazardous materials in non-DOT specification cylinders. (modes 1, 2, 3, 4)
20377–N		CYTEC Industries Inc	172.201, 172.400, 172.301, 173.213.	To authorize the transportation in commerce of phosphorous in reportable quantities without being subject to the requirements of the HMR. (modes 1, 4)
20378–N		LG Chem	172.101(j)	To authorize the transportation in commerce of lithium batteries by cargo-only aircraft in excess of 35 kg net weight. (mode 4)

[FR Doc. 2016–30574 Filed 12–21–16; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has

received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 23, 2017.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(6); 49 CFR I.53(b)).

Issued in Washington, DC, on December 8, 2016.

Donald Burger,

Chief, Office of the Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
		Special Permits Data		
11180–M		Arrival Inc	24	To modify the special permit to authorize metal tubes with a decreased diameter and an increased length to be authorized under the special permit.
11516–P		Essendant Inc	177.800, 172.500, 173.304a, 172.200, 174.1, 172.400.	To authorize the transportation in commerce of certain DOT Specification 2Q containers containing certain hazardous materials.
12412–R		Green Touch Systems LLC.		To consolidate the exemptions that currently authorize the discharge of hazardous materials in UN Intermediate Bulk Containers (IBC) without removing the IBC from the motor vehicle on which it is transported.
13583–M		Structural Composites Industries LLC.	205, 3, 302A, 304A	To authorize an increase in the maximum water volume of the non-specification cylinders manufactured under the special permit.
14566–M		Nantong CIMC Tank Equipment Co., Ltd.	178.274(b), 178.274(b), 178.276(a)(2), 178.276(b)(1).	To modify the special permit to authorize portable tanks with a design margin of 3.5:1 instead of 4.0:1.
14691–R		Federal Express Corporation.		To authorize the return shipment by motor vehicle of hazardous materials that have been accepted, transported, and subsequently determined to be non-compliant with the Hazardous Materials Regulation's shipping paper, marking or labeling requirements.
14920–M		Nordco Rail Services LLC	173.302a(b), 172.203(a), 172.301(c), 180.205.	To modify the special permit to authorize requalification of DOT specification 3A and 3AA cylinders with 24 inch outside diameters and to indicate that Ultrasonic Examination (UE) is not required on the sidewall-to-base transitions (SBT) region of a cylinder if the cylinder design does not permit.
16273–R		Lohman Helicopter, LLC		To authorize the transportation in commerce of certain hazardous materials by 14 CFR part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.
16452–M		The Procter & Gamble Company.		To modify the permit to clarify the requirement for strong outer packaging to meet the requirements normally applied to packages of ''limited quantities'' moving by air.
16592–P		Maximum Rx Credit, Inc		To authorize the transportation in commerce of certain Drug Enforcement Administration (DEA) controlled substances transported for the purpose of disposal.
20220–N		Agility Fuel Systems, Inc	173.220(a)	To authorize the transportation in commerce of compressed natural gas fuel systems that are not part of an internal combustion engine.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20222–N		Trinity Containers, LLC	178.337–3(g)(3), 172.203(a), 172.302(c).	To authorize the transportation in commerce of certain DOT Specification MC–331 cargo tank motor vehicles with a water capacity greater than 3,000 gallons, manufactured to the DOT MC–331 specification, constructed of non-quenched and tempered (“NQT”) steel except that the cargo tanks have baffle supports welded directly to an angle on the inside of the cargo tank without the use of pads.
20226–N		Awesome Flight LLC	173.27(b)(3)	To authorize the transportation of lithium ion batteries in excess of the authorized quantity limitations via passenger and cargo aircraft.
20228–N		Worthington Cylinder Corporation.	173.302(f)(3), 173.302(f)(4), 173.302(f)(5), 173.302(a)(1), 173.304a(a)(1), 175.501(e)(3).	To authorize the manufacture, marking, sale and use of non-DOT specification fully wrapped carbon fiber reinforced steel lined cylinders for the transportation in commerce.
20235–N		Union Pacific Railroad Company Inc.	174.83(c), 174.83(d), 174.83(e).	To authorize the transportation in commerce of flatcars carrying bulk packagings containing certain Division 4.3 materials without restricting its ability to couple with another railcar while moving under its own momentum.
20239–N		Paklook Air, Inc	172.101(j)(1), 172.301(c)	To authorize the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within and around the State of Alaska when other means of transportation are impracticable or not available.
20251–N		Salco Products Inc	172.203(a), 178.345–1, 180.413.	To authorize the manufacture, mark, sale and use of manway assemblies constructed from stabilized polyethylene for installation on certain DOT specification cargo tank motor vehicles in transporting certain hazardous materials.
20260–N		Rogers Helicopters, Inc	173.27(b)(2), 172.101(j), 172.200(a), 172.200, 172.204(c)(3), 172.400(b), 172.400a(a), 172.300(a), 172.300, 172.301(c), 175.75(b), 175.75(c), 178.1010(a)(1) 173.185(a).	To authorize the transportation in commerce of certain hazardous materials by 14 CFR part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the US only, without being subject to hazard communication requirements, quantity, limitations, and certain loading and stowage requirements.
20261–N		Saft S.A		To authorize the transportation in commerce of prototype and low production lithium ion cells and batteries and lithium metal cells and batteries by cargo-only aircraft.
20262–N		Shuiazhuang Enric Gas Equipment Co., Ltd..	173.302(a), 173.304(a)	To authorize the transportation of certain hazardous materials in non-DOT specification fiber reinforced composite cylinders.
20266–N		Zhejiang Tiantai Zhantu Automobile Supplies Co., Ltd.	173.304(a), 173.304(d)	To authorize the manufacture, mark, sale and use of a non-refillable, non-DOT specification inside metal container conforming to all regulations applicable to a DOT specification 2Q, except as specified herein, for the transportation in commerce of the materials authorized by this special aircraft.
20271–N		Ball Aerospace & Technologies Corporation.	173.24(b)(1)	To authorize the transportation in commerce of DOT specification cylinders that have an identifiable release of hazardous materials during transportation.

[FR Doc. 2016–30577 Filed 12–21–16; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 23, 2017.

ADDRESSES: Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 8, 2016.

Donald Burger,

Chief, Office of the Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data				
15458–M	.....	Southern States, LLC	173.301(c), 173.304(a)	To modify the special permit to authorize transportation of a larger model of the equipment currently authorized under the special permit.

[FR Doc. 2016–30575 Filed 12–21–16; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2016–0204]

Exploring Industry Practices on Distribution and Display of Airline Fare, Schedule, and Availability Information: Extension of Response Deadline for Request for Information

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Request for Information (RFI), response to document and data request; clarification; and extension of response deadline.

SUMMARY: DOT is extending the response period for the RFI regarding industry practices on the distribution and display of airline flight schedule, fare, and availability information. The Department is extending the period for persons to submit responses to the RFI from December 30, 2016, to March 31, 2017. This action also addresses a request for documents or data submitted to the Department in connection with issues addressed in the RFI. This request for documents will be processed pursuant to requirements under the Freedom of Information Act (FOIA). This notice also responds to a request for clarification of statements in the RFI.

DATES: Responses should be filed by March 31, 2017.

ADDRESSES: You may file responses identified by the docket number DOT–OST–2016–0204 by any of the following methods:

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. 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 Ave. SE., between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251

Instructions: You must include the agency name and docket number DOT–OST–2016–0204 at the beginning of your submission. All submissions received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all submissions received in any of our dockets by the name of the individual submitting the document (or signing the submission, 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), or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Kyle-Etienne Joseph, Trial Attorney, Office of the General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC, 20590, 202–366–9342, 202–366–7152 (fax), *kyle-etienne.joseph@dot.gov* (email).

SUPPLEMENTARY INFORMATION:

DOT's Request for Information (RFI)

On October 31, 2016, the Department of Transportation published a Request for Information (RFI) to obtain public input regarding industry practices on the distribution and display of airline flight schedule, fare, and availability

information. The Department's RFI requests information on whether airline restrictions on the distribution or display of airline flight information harm consumers and constitute an unfair and deceptive business practice and/or an unfair method of competition. The RFI also requests information on whether any entities are blocking access to critical resources needed for competitive entry into the air transportation industry. Finally, the RFI requests information on whether Department action is unnecessary or whether Department action in these areas would promote a more competitive air transportation marketplace or help ensure that consumers have access to the information needed to make informed air transportation choices. See 81 FR 75481 (October 31, 2016). Responses on the matters discussed in the RFI were requested 60 days after publication in the **Federal Register** or by December 30, 2016.

A4A's Request for Extension of the Response Period on DOT's RFI

On November 8, 2016, we received a request from A4A to extend the response date to the RFI to either 60 days after the Department provides additional information in the docket as requested by A4A, or until March 31, 2017. See DOT–OST–2016–0204–0003.

On November 17, 2016, the Travel Technology Association (TTA) provided a response to the Department opposing A4A's requests. See DOT–OST–2016–0204–0004. TTA asks the Department to deny A4A's request for an extension of 91 days but states that it would not object to an extension of the response time to January 13, 2017, noting that the December 30, 2016, response date is close to two major holidays.

On November 23, 2016, A4A provided a response to TTA's letter opposing A4A's request for an extension. See DOT–OST–2016–0204–0012.

On November 30, 2016, Delta Air Lines, Inc. (Delta) provided a letter to the Department in support of A4A's request to extend the response period. See DOT–OST–2016–0204–0249.

On December 6, 2016, the Department received TTA's response to the November 23, 2016, A4A letter, and the November 30, 2016, Delta letter. See DOT–OST–2016–0204–0747.

The Department has considered the requests of A4A, TTA, and Delta. In response to the requests for extension of the response period, we grant the extension to March 31, 2017.

A4A's Request for Clarification on DOT's RFI

On November 8, 2016, we received a request from A4A to clarify certain statements and questions in the RFI. See DOT–OST–2016–0204–0003. A4A states that it needs clarification regarding some of the questions posed in the RFI and that it is not sure how the Department is using certain terms. In response to A4A's request, the Department provides the following clarifications.

A4A's first request for clarification is regarding terms that appear on 81 FR 75485. The RFI states on page 75485, center column, bottom paragraph, ''Some ticket agents assert that Web sites such as theirs can potentially better position new entrant airlines to compete with larger and more established airlines, especially considering recent airline consolidation.'' A4A states that the phrase ''better position new entrant airlines to compete'' implies that ticket agents can bias their displays in favor of new entrant airlines, which A4A states would be unfair and deceptive. We note that the Department recently issued a regulation that prohibits both ticket agents and carriers from biasing certain flight information displays based on carrier identity without disclosing such bias. See 81 FR 76800.

As described in the RFI, the Department requests additional information to aid the Department in its analysis. The phrase identified by A4A, ''better position new entrant airlines to compete,'' repeats assertions made by some ticket agents and we are requesting input on this assertion. See 81 FR 75485.

A4A's second clarification request relates to terms that appear on 81 FR 75486 where the RFI asks on the first column, whether ''any entities are blocking access to critical resources needed for competitive entry into the air transportation industry.'' Specifically, A4A asks what do ''critical resources'' and ''competitive entry'' mean in this context. The RFI also discusses the terms ''critical resources'' on page 75482, bottom of second column, top of third column, as follows:

> On April 15, 2016, the White House issued Executive Order 13725: Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy (the ''Executive Order''). The Executive Order expresses the importance of a fair, efficient, and competitive marketplace and notes that consumers need both competitive markets and information to make informed choices. The Department shares the goal of ensuring consumers are provided with information they need to make informed choices. In particular, as directed in the Executive Order, the DOT wants to identify any specific practices in connection with air transportation, such as blocking access to *critical resources,* that may impede informed consumer choice or unduly stifle new market entrants and determine whether the Department can potentially address those practices in appropriate instances. [emphasis added.]

The Executive Order referenced above directs the Department to take action to promote competition, and specifically to act in connection with abuses such as blocking access to *critical resources* that are needed for *competitive entry.* [emphasis added.] The Department uses ''critical resources'' and ''competitive entry'' in the same manner discussed in the RFI paragraph above and in the Executive Order.

A4A next asks what the Department means by ''air transportation industry,'' which appears on page 75486, and whether it refers to the distribution or the provision of air transportation. Regarding the ''air transportation industry,'' the Department is gathering information and did not distinguish specific aspects of the industry such as the distribution or provision of air transportation. Any interested party should provide any information it deems relevant to the issues identified in the RFI.

Also on page 75486, the RFI goes on to ask ''whether Department action in this area would promote a more competitive air transportation marketplace.'' A4A asks what ''more competitive air transportation marketplace'' means. As discussed in the RFI, some ticket agents informed the Department that they believed airline actions had an anti-competitive impact. As stated in the RFI, the Department is seeking any information relevant to the issues and concerns regarding competition identified in the RFI.

Finally, A4A's third clarification request refers to page 75486, in the third column, under ''Effects of Airlines Restricting Use of Flight Information,'' where the RFI says:

> We note that flight information is available through airline Web sites. Would a reduction in the availability of airline flight information on non-airline Web sites due to airline restrictions on the distribution and/or display of such information have a significant negative impact on consumers?

A4A states that the question is vague and asks what ''reduction in the availability of airline fight information'' means and what the baseline is for determining a ''reduction?'' The RFI describes and discusses the current availability of flight information on both airline and non-airline Web sites and

this question asks about a reduction as compared to currently available flight information. Any interested party should provide any information it deems relevant to the question.

A4A's Request for Documents and Data Related to DOT's RFI

On November 8, 2016, we also received a request from A4A to provide any documents or data related to the RFI that would enable airlines and other stakeholders to provide meaningful and comprehensive responses. See DOT–OST–2016–0204–0003. On November 30, 2016, Delta provided a letter to the Department in support of A4A's request for the Department to provide additional documents and data related to the RFI. See DOT–OST–0204–0249.

A4A and Delta request the following:

1. Formal and informal complaints (such as correspondence or memoranda) by online travel agents (OTAs) and metasearch sites (MSSs) regarding airline distribution practices for the period 2011 to present.
2. Documentation regarding the resolution of any such formal or informal complaint.
3. Research, data, and analysis provided to support any such complaints or to support the concerns claimed by OTAs and MSSs as described in the Notice.
4. Data provided by OTAs or MSSs indicating the number of OTAs or MSSs affected by air carrier distribution restrictions described in the Notice.
5. The Travel Technology Association/Charles River Associates paper dated May 19, 2015 and any supporting work papers, data or supplemental information.
6. Correspondence and records of communications between the Department and Travel Technology Association or Charles River Associates, or any of their representatives.
7. Correspondence between the Department and any other Federal, State or local agency regarding the topic of the Notice, including the issue of consumer rights and comparison shopping.
8. Data provided by OTAs/MSSs or other ticket agents regarding the volume of combined one-way tickets sold that are packaged to create a round-trip itinerary in order to provide a lower cost option than a single carrier round trip offering, and related savings data.

In response to A4A's request for documents and data, the Department notes that the Travel Technology Association/Charles River Associates paper dated May 19, 2015, is already publicly available as described in the RFI. Nevertheless, the Department has posted the document in the docket for this proceeding. The Department has also posted Executive Order 13725 in the docket. Regarding the remaining documents and data requested by A4A, the Department has identified this request as one for records under the Freedom of Information Act (FOIA) and has forwarded it to the Office of the Secretary's FOIA Office for processing. The FOIA Office will provide any responsive and releasable information to A4A and Delta and the Department also will place this information in the docket. The Department does not view the outcome of the FOIA request to be material to stakeholders' ability to respond to the RFI. Accordingly, to the extent that the Department has not responded to the FOIA request by March 31, 2017, interested parties should not delay providing a response.

Issued this 16th day of December, 2016, in Washington, DC

Molly J. Moran,

Acting General Counsel.

[FR Doc. 2016–30830 Filed 12–21–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: December 19, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 23, 2017 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–0934, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Paperwork Reduction Act of 1995, Public Law 104–13.

Fiscal Service (FS)

OMB Control Number: 1530–0030.

Type of Review: Extension without change of a currently approved collection.

Title: Special Bond of Indemnity By Purchaser of United States Savings Bonds/Notes Involved in a Chain Letter Scheme.

Form: FS Form 2966.

Abstract: The information is requested to support a request for refund of the purchase price of savings bonds purchased in a chain letter scheme.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 320.

OMB Control Number: 1530–0046.

Type of Review: Extension without change of a currently approved collection.

Title: Agreement And Request For Disposition Of A Decedent's Treasury Securities.

Form: FS Form 5394.

Abstract: The information is necessary to distribute Treasury securities and/or payments to the entitled person(s) when the decedent's estate was formally administered through the court and has been closed, or the estate is being settled in accordance with State statute without the necessity of the court appointing a legal representative.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 9,250.

OMB Control Number: 1530–0051.

Type of Review: Extension without change of a currently approved collection.

Title: Offering of U.S. Mortgage Guaranty Insurance Company Tax and Loss Bonds.

Abstract: Regulations governing the issue, reissue, and redemption of U.S. Mortgage Guaranty Insurance Company Tax and Loss Bonds.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 13.

Bob Faber,

Acting Treasury PRA Clearance Officer.

[FR Doc. 2016–30888 Filed 12–21–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 19, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 23, 2017 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–0934, or viewing the entire information collection request at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Control Number: 1545–0092.

Type of Review: Revision of a currently approved collection.

Title: U.S. Income Tax Return for Estates and Trusts.

Forms: 1041, Schedule D (Form 1041), Schedule D–1 (Form 1041), Schedule I (Form 1041), Schedule J (Form 1041), Schedule K–1 (Form 1041), 1041–V.

Abstract: IRC section 6012 requires that an annual income tax return be filed for estates and trusts. Data is used to determine that the estates, trusts, and beneficiaries file the proper returns and paid the correct tax. The various schedules (Schedule D, I, J, and K–I) are used in the collection of information under the various authorizing statutes seen below (Legal Statutes). The worksheets are used to figure various taxes and deductions. Form 1041–V allows the Internal Revenue Service to process the payment more accurately and efficiently. The IRS strongly encourages the use of Form 1041–V, but there is no penalty if it is not used.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 307,784,800.

OMB Control Number: 1545–0181.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.

Form: 4768.

Abstract: Form 4768 is used by estates to request an extension of time to file an estate (and GST) tax return and/or to pay the estate (and GST) taxes and to explain why the extension should be granted. IRS uses the information to decide whether the extension should be granted.

Affected Public: Individuals and Households.

Estimated Total Annual Burden Hours: 30,710.

OMB Control Number: 1545–0954.

Type of Review: Extension without change of a currently approved collection.

Title: Return for Nuclear Decommissioning Funds and Certain Related Persons.

Form: 1120–ND.

Abstract: A nuclear utility files Form 1120–ND to report the income and taxes of a fund set up by the public utility to provide cash for the dismantling of the nuclear power plant. The IRS uses Form 1120–ND to determine if the fund income taxes are correctly computed and if a person related to the fund or the nuclear utility must pay taxes on self-dealing.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 3,259.

OMB Control Number: 1545–1595.

Type of Review: Extension without change of a currently approved collection.

Title: Automatic Data Processing—(Rev. Proc. 98–25).

Abstract: Rev. Proc. 98–25 specifies the basic requirements that the IRS considers to be essential in cases where a taxpayers's records are maintained within an Automatic Data Processing System (ADP). If machine-sensible records are lost, stolen, destroyed, or materially inaccurate, the Rev. Proc. requires that a taxpayer promptly notify its District Director and submit a plan to replace the affected records. The District Director will notify the taxpayer of any objection(s) to the taxpayer's plan. Also, the Rev. Proc. provides that a taxpayer who maintains machine-sensible records may request to enter into a Record Retention Limitation Agreement (RRLA) with its District Director.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 120,000.

OMB Control Number: 1545–1668.

Type of Review: Extension without change of a currently approved collection.

Title: Return of U.S. Persons With Respect to Certain Foreign Partnerships.

Forms: 8865, Sch K–1, Sch O, Sch P.

Abstract: The Taxpayer Relief Act of 1997 significantly modified the information reporting requirements with respect to foreign partnerships. The Act made the following three changes (1) expanded section 6038B to require U.S. persons transferring property to foreign partnerships in certain transactions to report those transfers; (2) expanded section 6038 to require certain U.S. Partners of controlled foreign partnerships to report information about the partnerships; and (3) modified the reporting required under section 6046A with respect to acquisitions and dispositions of foreign partnership interests.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 245,074.

OMB Control Number: 1545–1722.

Type of Review: Extension without change of a currently approved collection.

Title: Extraterritorial Income Exclusion.

Abstract: A taxpayer uses Form 8873 to claim the gross income exclusion provided for by section 114 of the Internal Revenue Code.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 19,087,500.

OMB Control Number: 1545–1736.

Type of Review: Extension without change of a currently approved collection.

Title: Advanced Insurance Commissions—Revenue Procedure 2001–24.

Abstract: A taxpayer that wants to obtain automatic consent to change its method of accounting for cash advances on commissions paid to its agents must agree to the specified terms and conditions under the revenue procedure. This agreement is ratified by attaching the required statement to the federal income tax return for the year of change.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 1,318.

Bob Faber,

Acting Treasury PRA Clearance Officer.

[FR Doc. 2016–30887 Filed 12–21–16; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 81 Thursday,

No. 246 December 22, 2016

Part II

Department of Labor

Exemptions From Certain Prohibited Transaction Restrictions; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: 2016–13, Deutsche Investment Management Americas Inc. and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG, D–11856; 2016–14, Citigroup, Inc., D–11859; 2016–15, JPMorgan Chase & Co., D–11861; 2016–16, Barclays Capital Inc., D–11862; and 2016–17, UBS Assets Management; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O'Conner LLC; and Certain Future Affiliates in UBS's Asset Management and Wealth Management Americas Divisions, D–11863.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011) [1] and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Deutsche Investment Management Americas Inc. (DIMA) and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG (Collectively, the Applicant or the DB QPAMs) Located in New York, New York

[Prohibited Transaction Exemption 2016–13; Exemption Application No. D–11856]

Temporary Exemption

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed temporary exemption in the **Federal Register** at 81 FR 83336, proposing that certain entities with specified relationships to DSK or DB Group Services could continue to rely upon the relief provided by PTE 84–14 (49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010)), notwithstanding the Convictions.

No relief from a violation of any other law is provided by this temporary exemption, including any criminal conviction described in the notice of proposed temporary exemption. Furthermore, the Department cautions that the relief in this temporary exemption will terminate immediately if, among other things, an entity within the Deutsche Bank corporate family is convicted of a crime described in Section I(g) of PTE 84–14 during the effective period of the temporary exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant that exemption. The terms of this temporary exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the temporary exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed temporary exemption, published in the **Federal Register** at 81 FR 83336 on November 21, 2016. All comments and requests for a hearing were due by November 26, 2016. The Applicant submitted a comment to the Department during the comment period in connection with the proposed temporary exemption. The comment letter contained the Applicant's request for a number of revisions to the proposed exemption, and was further supplemented through additional correspondence, as requested by the Department. After considering the comment letter, the Department determined that some, but not all, of the requested revisions have merit, and has revised the exemption in the manner described below. All requested revisions and comments, accepted or omitted, will be reconsidered for purposes of the longer term relief proposed in the **Federal Register** at 81 FR 83400 on November 21, 2016, in connection with Exemption Application Number D–11908.

Revision 1. Definition of the Convictions

Section II(a) of the proposed temporary exemption reads, in relevant part, that ''[f]or all purposes under this exemption, 'conduct' of any person or entity that is the 'subject of [a] Conviction' encompasses any conduct of Deutsche Bank and/or their personnel, that is described in the Plea Agreement (including the Factual Statement thereto), Court judgments (including the judgment of the Seoul Central District Court), criminal complaint documents from the Financial Services Commission in Korea, and other official regulatory or judicial factual findings that are a part of this record.''

The Applicant requests that the Department modify Section II(a) of the proposed temporary exemption, to narrow the scope of activity that is considered to be the ''conduct'' of a person or entity that is the subject of a Conviction. According to the Applicant, the definition as proposed may create

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

undue uncertainty for the Applicant and for plan fiduciaries and counterparties transacting with plans. Deutsche Bank states that the language in Section II(a) expands the ''conduct'' that is considered the subject of the Conviction beyond that which is described as criminal in the Plea Agreement. Moreover, Deutsche Bank suggests that the reference to ''other official regulatory or judicial factual findings that are a part of this record'' is vague and could potentially refer to findings by regulators or in civil proceedings involving the Applicant and disclosed to the Department.

The Department concurs with this comment, and has revised Section II(a) as follows: ''For all purposes under this exemption, 'conduct' of any person or entity that is the 'subject of [a] Conviction' encompasses the factual allegations described in Paragraph 13 of the Plea Agreement filed in the District Court in Case Number 3:15–cr–00062–RNC, and in the 'Criminal Acts' section pertaining to 'Defendant DSK' in the Decision of the Seoul Central District Court.'' The Department also deleted the parenthetical in paragraph I(a) regarding the term ''participate in'' and reworded the ''participate in'' parenthetical in paragraph I(c) to read: ''(for purposes of this paragraph (c), ''participated in'' includes approving or condoning the misconduct underlying the Conviction).''

Revision 2. Indemnification and Notice Provisions in Section I(j).

Section I(j) of the proposed temporary exemption provides that, ''[e]ffective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a DB QPAM and an ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees'' to comply with certain obligations described in Sections I(j)(1) through (7). Specifically, Section I(j)(7) requires such DB QPAMs ''[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions.''

The Applicant requested that the Department modify the language of Section I(j), including Section I(j)(7), in order to narrow the scope of the contractual obligations in two respects. First, the Applicant requested that the contractual obligations described in Section I(j)(1) through (7) apply only with respect to any arrangement, agreement, or contract between a DB QPAM and an ERISA-covered plan or IRA under which the DB QPAM provides asset management or other discretionary fiduciary services *in reliance on PTE 84–14.* The Department declines to make this revision. Often, parties enter into arrangements with financial institutions in reliance on their QPAM status, irrespective of whether PTE 84–14 is strictly needed or in circumstances where more than one exemption may be available. The broad applicability of the conditions of Section I(j) ensures that the parties' reliance is not misplaced; avoids needless disputes over the particular exemption relied upon by the QPAMs; and encourages a broad culture of compliance and accountability at the QPAMs, consistent with the rightful expectations of plans and IRAs that engage in transactions with QPAMs. A broad application of Section I(j) is in the interest of ERISA-covered plans and IRAs and protective of their rights. The DB QPAMs should be held to a high standard of integrity with respect to all ERISA-covered plans and IRAs, and not just those with respect to which it relies on PTE 84–14.

Secondly, the Applicant claims that the indemnification and hold harmless requirement in subparagraph (7) is overly broad and does not impose any limit on damages to be paid. Therefore, the Applicant requests that scope of the indemnification obligation in Section I(j)(7) be narrowed by removing the phrase ''any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of'' and replacing it with '' *the reasonable costs of terminating the investment management agreement with the DB QPAM and the retention of a replacement manager arising from.*'' The Department declines to make the requested revision, as it would not be in the interest of or protective of the rights of ERISA-covered plans and IRAs to limit such plans' contractual indemnification rights in the event that they have a reasonable basis to seek redress. However, the Department agrees to modify Section I(j)(7) to clarify that ''applicable laws'' refer to the fiduciary duties of ERISA and the prohibited transaction provisions of ERISA and the Code, which are likewise required to be included in the Policies described in Section I(h) of this exemption.

Therefore, Section I(j)(7) of the temporary exemption, as granted, requires a DB QPAM ''[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions.''

The Department is also revising the notice requirement in paragraph (j) to require that each DB QPAM will provide a notice of its agreement under Section I(j) to each ERISA-covered plan and IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, and to provide that it must be completed within six (6) months of the effective date of this temporary exemption.

Revision 3. Restrictions on Withdrawals in Section I(j)

Section I(j)(4) of the proposed temporary exemption requires that the DB QPAMs must agree ''(n)ot to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors.''

The Applicant requests that the Department modify Section I(j)(4) to include additional exceptions under which reasonable withdrawal restrictions on ERISA-covered plans and IRAs may be imposed. Furthermore, the Applicant requests that the withdrawal restrictions apply on a prospective basis only, due to the difficulty of modifying the terms of withdrawal in connection with prior investments in pooled funds that may become subject to ERISA.

The Department does not believe that an open-ended exception under which additional withdrawal restrictions may be imposed on ERISA-covered plans and IRAs invested in pooled funds is protective of the rights of participants and beneficiaries of those plans. However, the Department has modified Section I(j)(4) to make it clear that a ''lack of liquidity'' may include a range

of circumstances where reasonable restrictions are necessary to protect remaining investors in a pooled fund. Furthermore, the Department has modified Section I(j)(4) in order to clarify that the limitation of adverse consequences to those resulting from a lack of liquidity, valuation issues, or regulatory reasons, is only required with respect to investments in a pooled fund subject to ERISA entered into after the Conviction Date. In any such event, the restrictions must be reasonable and last no longer than reasonably necessary to avoid the adverse consequences to investors in the fund.

Therefore, Section I(j)(4) of this temporary exemption, as modified, requires DB QPAMs: ''Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the U.S. Conviction Date, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.''

Revision 4. Modification of Section I(g)

Section I(g) of the proposed temporary exemption provides that, ''DSK and DB Group Services will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan and IRA assets.'' The Applicant requests that this condition be modified in order to allow DSK to act as a fiduciary by virtue of providing investment advice. The Applicant states that personnel of DSK may inadvertently become investment advice fiduciaries under Department Regulation section 2510.3–21 in the event such personnel give advice in connection with the execution of a trade that involves an ERISA-covered plan or IRA. According to the Applicant, this situation may arise in connection with the execution of block trades or settlement of trades submitted by third parties that, unbeknownst to DSK, involve ERISA-covered plans and IRAs. Furthermore, the Applicant requests that Section I(g) be modified so that, in the event DSK or DB Group Services establish their own retirement plan, they will not be deemed to have violated this condition.

Based on these and similar concerns, the Department has revised Section I(g) to provide that ''Other than with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate, DSK and DB Group Services will not act as fiduciaries within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets; in accordance with this provision, DSK and DB Group Services will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii), or Section 4975(e)(3)(B) of the Code, or because DB Group Services employees may be doublehatted, seconded, supervised or otherwise subject to the control of a DB QPAM, including in a discretionary fiduciary capacity with respect to the DB QPAM clients.''

Revision 6. Technical Corrections and Clarifications

The Department made several technical corrections and a clarification to the proposed temporary exemption requested by the Applicant, that are described below:

The date of the Korean Conviction correctly provides that January 25, 2016 is the date of the Korean Conviction in the prefatory language of this final temporary exemption.

Section I(i)(8) of the final temporary exemption is revised to require that ''[t]he Audit Committee of Deutsche Bank's Supervisory Board is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.''

The Department is revising Section I(j)(1) of the proposed temporary exemption in order to clarify the obligations of DB QPAMs applicable with respect to ERISA-covered plans and IRAs. In this regard, Section I(j)(1) of the final temporary exemption provides that each DB QPAM agrees ''[t]o comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA.''

Section II(b) of the final temporary exemption corrects the typo in ''DB Group Services'' in the proposed temporary exemption. Section II(b) of the final temporary exemption correctly refers to section VI(d)(1) of PTE 84–14 in the definition of ''affiliate.'' The prefatory language and Section II(e) of the final temporary exemption correctly provides that ''DB Group Services (UK) Limited'' is the full name of DB Group Services. Section II(g) of the final temporary exemption correctly refers to the ''Agreed Statement of Fact'' and ''the charge brought'' in connection with the definition of ''Plea Agreement,'' and the phrase ''related to the manipulation of the London Interbank Offered Rate (LIBOR)'' has been struck from technical description of the charge.

Finally, the Department clarifies that, to the extent that the Training requirements in Section I(h)(2) of the temporary exemption and PTE 2016–12 are consistent, such provisions should be harmonized so that the sequential exemptions do not inadvertently require multiple trainings per year covering the same material.

After giving full consideration to the entire record, the Department has decided to grant the temporary exemption. The complete application file for the temporary exemption (Exemption Application No. D–11856), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this Extension, refer to the notice of proposed extension, published on November 21, 2016, at 81 FR 8336.

Temporary Exemption Operative Language

Section I: Covered Transactions

Certain entities with specified relationships to Deutsche Bank AG (hereinafter, the DB QPAMs, as further defined in Section II(b)) will not be precluded from relying on the

exemptive relief provided by Prohibited Transaction Exemption (PTE) 84–14,[2] notwithstanding (1) the ''Korean Conviction'' against Deutsche Securities Korea Co., a South Korean affiliate of Deutsche Bank AG (hereinafter, DSK, as further defined in Section II(f)), entered on January 25, 2016; and (2) the ''US Conviction'' against DB Group Services (UK) Limited, an affiliate of Deutsche Bank based in the United Kingdom (hereinafter, DB Group Services, as further defined in Section II(e)), scheduled to be entered on April 3, 2017 (collectively, the Convictions, as further defined in Section II(a)),[3] for a period of up to 12 months beginning on the U.S. Conviction Date (as further defined in Section II(d)), provided that the following conditions are satisfied:

(a) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK and DB Group Services that is the subject of the Convictions;

(b) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Convictions;

(c) The DB QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Convictions (for purposes of this paragraph (c), ''participated in'' includes approving or condoning the misconduct underlying the Convictions);

(d) A DB QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such DB QPAM to enter into any transaction with DSK or DB Group Services, or engage DSK or DB Group Services to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the DB QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions;

(f) A DB QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Convictions; or cause the QPAM, affiliates, or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Convictions;

(g) Other than with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate, DSK and DB Group Services will not act as fiduciaries within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets; in accordance with this provision, DSK and DB Group Services will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii), or Section 4975(e)(3)(B) of the Code, or because DB Group Services employees may be doublehatted, seconded, supervised or otherwise subject to the control of a DB QPAM, including in a discretionary fiduciary capacity with respect to the DB QPAM clients;

(h)(1) Each DB QPAM must immediately develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the DB QPAM are conducted independently of Deutsche Bank's corporate management and business activities, including the corporate management and business activities of DB Group Services and DSK;

(ii) The DB QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the DB QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients;

(vi) The DB QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with, an item in subparagraph (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant DB QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of Deutsche Bank; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of Deutsche Bank or beneficially owned by an employee of Deutsche Bank or its affiliates, such fiduciary does not need to be independent of Deutsche Bank. A DB QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each DB QPAM must immediately develop and implement a program of training (the Training), conducted at least annually, for all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this temporary exemption (including any loss of exemptive relief provided

[2] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[3] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain criminal activity therein described.

herein), and prompt reporting of wrongdoing;

(i)(1) Each DB QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the DB QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit period under this temporary exemption begins on October 24, 2016, and continues through the entire effective period of this temporary exemption (the Audit Period). The Audit Period will cover the contiguous periods of time during which PTE 2016–12, the Extension of PTE 2015–15 (81 FR 75153, October 28, 2016) (the Extension) and this temporary exemption are effective. The audit terms contained in this paragraph (i) supersede the terms of paragraph (f) of the Extension. However, in determining compliance with the conditions for the Extension and this temporary exemption, including the Policies and Training requirements, for purposes of conducting the audit, the auditor will rely on the conditions for exemptive relief as then applicable to the respective portions of the Audit Period. The audit must be completed no later than six (6) months after the period to which the audit applies;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel;

(3) The auditor's engagement must specifically require the auditor to determine whether each DB QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this temporary exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving ERISA-covered plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding: The adequacy of the DB QPAM's Policies and Training; the DB QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective DB QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective DB QPAM must be promptly addressed by such DB QPAM, and any action taken by such DB QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective DB QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the DB QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the DB QPAM has actually implemented, maintained, and followed the Policies and Training required by this temporary exemption;

(6) The auditor must notify the respective DB QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the DB QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this temporary exemption; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this temporary exemption, and with the applicable provisions of ERISA and the Code;

(8) The Audit Committee of Deutsche Bank's Supervisory Board is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each DB QPAM provides its certified Audit Report, by regular mail to: The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW., Suite 400, Washington, DC 20001–2109, no later than 45 days following its completion. The Audit Report will be part of the public record regarding this temporary exemption. Furthermore, each DB QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such DB QPAM;

(10) Each DB QPAM and the auditor must submit to OED: (A) Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption; and (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this temporary exemption, no later than six (6) months after the effective date of this temporary exemption (and one month after the execution of any agreement thereafter);

(11) The auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant DB QPAM; and an explanation of any corrective or remedial action taken by the applicable DB QPAM; and

(12) Deutsche Bank must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until Deutsche Bank demonstrates to the Department's satisfaction that such new auditor is independent of Deutsche Bank, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption;

(j) As of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a DB QPAM and an ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees:

(1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA;

(2) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(3) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the DB QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the U.S. Conviction Date, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the DB QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank and its affiliates; and

(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions;

Within six (6) months of the effective date of this temporary exemption, each DB QPAM will provide a notice of its agreement and obligations under this Section I(j) to each ERISA-covered plan and IRA for which the DB QPAM provides asset management or other discretionary fiduciary services;

(k) The DB QPAMs comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84–14 that are attributable to the Convictions;

(l) Deutsche Bank disgorged all of its profits generated by the spot/futures-linked market manipulation activities of DSK personnel that led to the Conviction against DSK entered on January 25, 2016, in Seoul Central District Court;

(m) Each DB QPAM will maintain records necessary to demonstrate that the conditions of this temporary exemption have been met, for six (6) years following the date of any transaction for which such DB QPAM relies upon the relief in the temporary exemption;

(n) During the effective period of this temporary exemption, Deutsche Bank: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that Deutsche Bank or any of its affiliates enter into with the U.S Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreements; and

(o) A DB QPAM will not fail to meet the terms of this temporary exemption, solely because a different DB QPAM fails to satisfy a condition for relief under this temporary exemption described in Sections I(c), (d), (h), (i), (j), (k), and (m).

Section II: Definitions

(a) The term ''Convictions'' means (1) the judgment of conviction against DB Group Services, in Case 3:15-cr-00062–RNC to be entered in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 U.S.C. § 1343, and (2) the judgment of conviction against DSK entered on January 25, 2016, in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation. For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses the factual allegations described in Paragraph 13 of the Plea Agreement filed in the District Court in Case Number 3:15–cr–00062–RNC, and in the ''Criminal Acts'' section pertaining to ''Defendant DSK'' in the Decision of the Seoul Central District Court;

(b) The term ''DB QPAM'' means a ''qualified professional asset manager'' (as defined in section VI(a) [4] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which DSK or DB Group Services is a current or future ''affiliate'' (as defined in section VI(d)(1) of PTE 84–14). For purposes of this temporary exemption, Deutsche Bank Securities, Inc. (DBSI), including all entities over which it exercises control; and Deutsche Bank AG, including all of its branches, are excluded from the definition of a DB QPAM;

(c) The term ''Deutsche Bank'' means Deutsche Bank AG but, unless indicated otherwise, does not include its subsidiaries or affiliates;

[4] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

(d) The term ''U.S. Conviction Date'' means the date that a judgment of conviction against DB Group Services, in Case 3:15–cr–00062–RNC, is entered in the United States District Court for the District of Connecticut, currently scheduled for April 3, 2017;

(e) The term ''DB Group Services'' means DB Group Services (UK) Limited, an ''affiliate'' of Deutsche Bank (as defined in Section VI(c) of PTE 84–14) based in the United Kingdom;

(f) The term ''DSK'' means Deutsche Securities Korea Co., a South Korean ''affiliate'' of Deutsche Bank (as defined in Section VI(c) of PTE 84–14);

(g) The term ''Plea Agreement'' means the Plea Agreement (including the Agreed Statement of Fact), dated April 23, 2015, between the Antitrust Division and Fraud Section of the Criminal Division of the U.S. Department of Justice (the DOJ) and DB Group Services resolving the charge brought by the DOJ in Case 3:15–cr–00062–RNC against DB Group Services for wire fraud in violation of Title 18, United States Code, Section 1343; and

(h) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code.

Effective Date: This temporary exemption will be effective for the period beginning on the U.S. Conviction Date, and ending on the earlier of the date that is twelve months following the U.S. Conviction Date; or the effective date of a final agency action made by the Department in connection with Exemption Application No. D–11908, an application for long-term exemptive relief for the covered transactions described herein.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Ness of the Department, telephone (202) 693–8561, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (this is not a toll-free number).

Citigroup, Inc. (Citigroup or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption 2016–14; Exemption Application No. D–11859]

Temporary Exemption

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed temporary exemption in the **Federal Register** at 81 FR 83350, proposing that certain entities with specified relationships to Citigroup could continue to rely upon the relief provided by PTE 84–14 (49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010)), notwithstanding the Conviction for a period of up to twelve months beginning on the Conviction Date.

No relief from a violation of any other law is provided by this temporary exemption, including any criminal conviction described in the proposed temporary exemption. Furthermore, the Department cautions that the relief in this temporary exemption will terminate immediately if, among other things, an entity within the Citigroup corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the temporary exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this temporary exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the temporary exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed temporary exemption, published in the **Federal Register** at 81 FR 83350 on November 21, 2016. All comments and requests for a hearing were due by November 28, 2016. The Department received written comments from the Applicant, the substance of which is discussed below.

During the comment period, the Applicant submitted a request for the Department to make a number of revisions to the proposed exemption. Thereafter, the Applicant submitted additional information in support of its request. After considering these submissions, the Department has determined to make certain of the revisions sought by the Applicant. The revisions declined by the Department, as well as the revisions described below, will be reconsidered as part of the review process for the proposed five year exemption published in the **Federal Register** at 81 FR 83416 on November 21, 2016, in connection with Exemption Application Number D–11909.

Revision 1. Deletion of Reference to the Markets and Securities Services Business of Citigroup in Section I(d) of the Proposed Exemption

Section I(d) of the proposed temporary exemption provides that ''[a] Citigroup Affiliated QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such Citigroup Affiliated QPAM, to enter into any transaction with Citicorp or the Markets and Securities Services Business of Citigroup, or to engage Citicorp or the Markets and Securities Services Business of Citigroup, to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption[.]''

The Applicant represents that a sudden cessation of services on December 15, 2016, by the Markets and Securities Services Business of Citigroup to affected plans, such as agency securities lending services, would be disruptive to those plans. The Applicant seeks deletion of the condition's reference to ''the Markets and Securities Services Business of Citigroup.'' The Department concurs with this comment, as has revised the condition accordingly. However, the Department may reconsider making such modification in connection with its determination whether or not to grant relief in Exemption Application Number D–11909, the proposed five year exemption published in the **Federal Register** at 81 FR 83416 on November 21, 2016.

Revision 2. Deletion of Reference to the Markets and Securities Services Business of Citigroup in Section I(g) of the Proposed Exemption

Section I(g) of the proposed temporary exemption provides that ''Citicorp and the Markets and Securities Services Business of Citigroup have not provided nor will provide discretionary asset management services to ERISA-covered plans or IRAs, or otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets[.]''

The Applicant represents that the Markets and Securities Services Business of Citigroup may be deemed to involve fiduciary conduct. The Applicant states that requiring those services to be terminated suddenly would be disruptive to affected plans. The Applicant therefore seeks deletion

of the condition's reference to ''the Markets and Securities Services Business of Citigroup.''

The Department concurs with this comment, and has revised the condition in this final temporary exemption, in order to avoid a significant disruption and damages to affected ERISA-covered plans and IRAs. Section I(g) of the final exemption now provides that ''Other than with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate, Citicorp will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets; in accordance with this provision, Citicorp will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii) or Section 4975(e)(3)(B) of the Code.''

Revision 3. Deletion of Reference to the Markets and Securities Services Business of Citigroup in Section I(h) of the Proposed Exemption.

Section I(h)(1)(i) provides that ''each Citigroup Affiliated QPAM must develop, implement, maintain, and follow written policies (the Policies) requiring and reasonably designed to ensure that:'' . . . ''(i) The asset management decisions of the Citigroup Affiliated QPAM are conducted independently of the corporate management and business activities of Citigroup, including the Markets and Securities Services Business of Citigroup[.]''

The Applicant seeks deletion of the condition's reference to the Markets and Securities Services Business of Citigroup, in order to avoid disruption to affected plans and IRAs. The Department concurs with this comment, and has revised the condition accordingly.

Revision 4. References to the Conviction

The prefatory language of Section I of the proposed temporary exemption provides that ''the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, as defined in Sections II(a) and II(b), respectively, will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the judgment of conviction against Citicorp (the Conviction, as defined in Section II(c)), for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market.''

Furthermore, Section II(e) of the proposed temporary exemption provides that, in relevant part, ''[t]he term 'Conviction' means the judgment of conviction against Citigroup for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15–cr–78–SRU), in connection with Citigroup, through one of its euro/U.S. dollar (EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this temporary exemption, if granted, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of Citigroup and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record[.]''

The Applicant requests that the Department modify the prefatory language in Section I and the language of Section II(e) of the proposed temporary exemption, to more precisely define the term ''Conviction'' and narrow the scope of activity that is considered to be the ''conduct'' of a person or entity that is the subject of a Conviction. According to the Applicant, the reference to Conviction in the prefatory language of Section I may be confusing for plans and their counterparties. Furthermore, the Applicant states that the proposed definition of Conviction in Section II(e) expands the ''conduct'' that is considered the subject of the Conviction beyond that which is described as criminal in the Plea Agreement, and the reference to ''other official regulatory or judicial factual findings that are a part of this record'' is vague and could potentially refer to findings by regulators or in civil proceedings involving the Applicant and disclosed to the Department.

The Department concurs with the Applicant's comment and has modified the language in the final temporary exemption to provide that ''[t]he term ''Conviction'' means the judgment of conviction against Citicorp for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15–cr–78–SRU). For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses the conduct described in Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in Case Number 3:15–cr–78–SRU.'' Furthermore, the Department deleted the parenthetical in paragraph (a) regarding the term ''participate in'' and reworded the ''participate in'' parenthetical in paragraph (c) to read: ''(for purposes of this paragraph (c), ''participated in'' includes approving or condoning the misconduct underlying the Conviction).''

Revision 5. The Policies and Training in Section I(h)

Section I(h)(1) of the proposed temporary exemption requires each Citigroup Affiliated QPAM to ''develop, implement, maintain and follow'' the written policies and procedures (the Policies) described in Section I(h)(1)(i) through (vii). Furthermore, Section I(h)(2) requires each Citigroup Affiliated QPAM to ''develop and implement a program of training (the Training)'' described therein. In its comment and in subsequent conversations with the Department, the Applicant requested that Sections I(h)(1) and (2) be modified to allow the Citigroup Affiliated QPAMs a period of up to six (6) months following the date of the Conviction to meet these requirements. The Department concurs with the Applicant's request. Therefore, in the final temporary exemption, the Department has modified Section I(h)(1) and (2) to provide that, respectively, ''Within six (6) months of the Conviction Date, each Citigroup Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) . . .'' and ''Within six (6) months of the Conviction Date, each Citigroup Affiliated QPAM must develop and implement a program of training (the Training) . . . .''

Revision 6. Indemnification Provision in Section I(i)

Section I(i) of the proposed temporary exemption provides that, ''(1) Effective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and an ERISA-covered plan or IRA for which such Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services, each Citigroup Affiliated QPAM agrees: ''. . . ''(vii) To indemnify and hold harmless

the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction.''

The Applicant requested that the Department modify the language of Sections I(i)(1) and I(i)(1)(vii) in order to narrow the scope of the contractual obligations in two respects. First, the Applicant requested that the contractual obligations described in Section I(i) apply only with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and an ERISA-covered plan or IRA under which the Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services *in reliance on PTE 84–14.* The Department declines to make this revision. Often, parties enter into arrangements with financial institutions in reliance on their QPAM status, irrespective of whether PTE 84–14 is strictly needed or in circumstances where more than one exemption may be available. The broad applicability of the conditions of Section I(i) ensures that the parties' reliance is not misplaced; avoids needless disputes over the particular exemption relied upon by the QPAMs; and encourages a broad culture of compliance and accountability at the QPAMs, consistent with the rightful expectations of plans and IRAs that engage in transactions with QPAMs. A broad application of Section I(i) is in the interest of ERISA-covered plans and IRAs and protective of their rights. The Citigroup Affiliated QPAMs should be held to a high standard of integrity with respect to all ERISA-covered plans and IRAs, and not just those with respect to which it relies on PTE 84–14.

Secondly, the Applicant requested that Section I(i)(1)(vii) be deleted, or alternatively, that the provision should be modified by adding the phrase ''To the extent required by applicable law,'' at the beginning of the paragraph. The Applicant claims that the indemnification and hold harmless requirement in subparagraph (vii) would unnecessarily create confusion and likely extensive litigation in the event of a claim by a plan or IRA for indemnity. The Department declines to make the requested revision, but agrees to modify the section to make it clear that the ''applicable laws'' referred to in Section I(i)(1)(vii) refer to the fiduciary duties of ERISA and the prohibited transaction provisions of ERISA and the Code. The requirement to comply with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, is included in the Policies required under the exemption. Therefore, Section I(i)(1)(vii) of the temporary exemption, as granted, requires a Citigroup Affiliated QPAM ''[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction.''

Revision 7. Restrictions on Withdrawals in Section I(i)

Section I(i)(1)(iv) of the proposed temporary exemption requires that the Citigroup Affiliated QPAMs must agree ''[n]ot to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors.''

The Department has modified Section I(i)(1)(iv) to make it clear that a lack of liquidity may include similar circumstances where reasonable restrictions are necessary to protect remaining investors in a pooled fund. Furthermore, the Department has modified Section I(i)(4) in order to clarify that the limitation of adverse consequences to those resulting from a lack of liquidity, valuation issues, or regulatory reasons, is only required with respect to investments in a pooled fund subject to ERISA entered into after the Conviction Date. In any such event, the restrictions must be reasonable and last no longer than reasonably necessary to avoid the adverse consequences to investors in the fund.

Therefore, Section I(i)(1)(iv) of the final temporary exemption requires Citigroup Affiliated QPAMs ''Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the Conviction Date, the adverse consequences must relate to a lack of liquidity of the pooled fund's underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions are applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.''

Revision 8. Definition of Citigroup Affiliated QPAM in Section II(a)

Section II(a) of the proposed temporary exemption precludes Citicorp and ''Citigroup's Markets and Securities Services Business'' from acting as QPAMs. The Department is removing this reference to ''Citigroup's Markets and Securities Services Business'' for purposes of this one year exemption.

Revision 9. New Definition of Citicorp

The Applicant requested in its comment that the Department adds a definition for the term ''Citicorp.'' The Department concurs and has modified the temporary exemption by adding Section II(g), a definition for the term ''Citicorp,'' which is defined as ''a financial services holding company organized and existing under the laws of Delaware and does not include any subsidiaries or other affiliates.''

Revision 10. Technical Corrections

The Department has made certain technical corrections to the proposed temporary exemption requested by the Applicant that are described below:

The references to the definition of ''Conviction'' and ''Conviction Date'' in the prefatory language of Section I are changed to correctly read ''the Conviction, as defined in Section II(e)'' and ''the Conviction Date, as defined in Section II(f).''

After giving full consideration to the record, the Department has decided to grant the temporary exemption, as described above. The complete application file (Application No. D–11859) is available for public inspection

in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this temporary exemption, refer to the notice of proposed temporary exemption published on November 21, 2016 at 81 FR 83350.

Temporary Exemption Operative Language

Section I: Covered Transactions

Certain entities with specified relationships to Citigroup (hereinafter, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, as defined in Sections II(a) and II(b), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[5] notwithstanding the judgment of conviction against Citicorp (the Conviction, as defined in Section II(e)),[6] for a period of up to twelve months beginning on the date of the Conviction (the Conviction Date, as defined in Section II(f)), provided that the following conditions are satisfied:

(a) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services Business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, agents other than Citicorp, and employees of such Citigroup QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of Citicorp that is the subject of the Conviction;

(b) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services Business, and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, agents other than Citicorp, and employees of such Citigroup Affiliated QPAMs), did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction;

(c) The Citigroup Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (c), ''participated in'' includes approving or condoning the misconduct underlying the Conviction);

(d) A Citigroup Affiliated QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such Citigroup Affiliated QPAM, to enter into any transaction with Citicorp, or to engage Citicorp to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a Citigroup Affiliated QPAM or a Citigroup Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A Citigroup Affiliated QPAM or a Citigroup Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further the criminal conduct that is the subject of the Conviction; or cause the Citigroup Affiliated QPAM or the Citigroup Related QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate, Citicorp will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets; in accordance with this provision, Citicorp will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii) or Section 4975(e)(3)(B) of the Code;

(h)(1) Within six (6) months of the Conviction Date, each Citigroup Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the Citigroup Affiliated QPAM are conducted independently of the corporate management and business activities of Citigroup;

(ii) The Citigroup Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The Citigroup Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the Citigroup Affiliated QPAM to regulators, including but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The Citigroup Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plans and IRA clients;

(vi) The Citigroup Affiliated QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant Citigroup Affiliated QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, where such fiduciary is independent of Citigroup; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of Citigroup or beneficially owned by an employee of Citigroup or its affiliates, such fiduciary does not need to be independent of Citigroup. A Citigroup Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies,

[5] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[6] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Within six (6) months of the Conviction Date, each Citigroup Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant Citigroup Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(i)(1) As of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and an ERISA-covered plan or IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services, each Citigroup Affiliated QPAM agrees:

(i) To comply with ERISA and the Code with respect to each such ERISA-covered plan and IRA, as applicable; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA;

(ii) Not to require (or otherwise cause) the ERISA covered plan or IRA to waive, limit, or qualify the liability of the Citigroup Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(iii) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Citigroup Affiliated QPAM for violating ERISA or the Code, or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary, which is independent of Citigroup, and its affiliates;

(iv) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the Conviction Date, the adverse consequences must relate to a lack of liquidity of the pooled fund's underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions are applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(v) Not to impose any fee, penalty, or charge for such termination or withdrawal, with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices, or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that each such fee is applied consistently and in like manner to all such investors;

(vi) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Citigroup Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of Citigroup, and its affiliates; and

(vii) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction;

(2) Within six (6) months of the date of the Conviction, each Citigroup Affiliated QPAM will provide a notice of its agreement and obligations under this Section I(i) to each ERISA-covered plan and IRA for which a Citigroup Affiliated QPAM provides asset management or other discretionary fiduciary services;

(j) The Citigroup Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction;

(k) Each Citigroup Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this temporary exemption have been met, for six (6) years following the date of any transaction for which such Citigroup Affiliated QPAM relies upon the relief in the temporary exemption;

(l) During the effective period of this temporary exemption, Citigroup: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that Citigroup or an affiliate enters into with the U.S. Department of Justice to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and

(2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement; and

(m) A Citigroup Affiliated QPAM or a Citigroup Related QPAM will not fail to meet the terms of this temporary exemption solely because a different Citigroup Affiliated QPAM or Citigroup Related QPAM fails to satisfy a condition for relief under this temporary exemption, described in Sections I(c), (d), (h), (i), (j), and (k).

Section II: Definitions

(a) The term ''Citigroup Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in section VI(a)[7] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which Citigroup is a current or future ''affiliate'' (as defined in section VI(d)(1) of PTE 84–14). The term ''Citigroup Affiliated QPAM'' excludes Citicorp;

(b) The term ''Citigroup Related QPAM'' means any current or future ''qualified professional asset manager''

[7] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements, and has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

(as defined in section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which Citigroup owns a direct or indirect five percent or more interest, but with respect to which Citigroup is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14);

(c) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code;

(d) The term ''Citigroup'' means Citigroup, Inc., the parent entity, and does not include any subsidiaries or other affiliates;

(e) The term ''Conviction'' means the judgment of conviction against Citicorp for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15–cr–78–SRU). For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses the conduct described in Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in Case Number 3:15–cr–78–SRU;

(f) The term ''Conviction Date'' means the date that a judgment of Conviction against Citicorp is entered by the District Court in connection with the Conviction; and

(g) The term ''Citicorp'' means Citicorp, a financial services holding company organized and existing under the laws of Delaware and does not include any subsidiaries or other affiliates.

Effective Date: This temporary exemption is effective for the period beginning on the Conviction Date until the earlier of: (1) The date that is twelve (12) months following the Conviction Date; or (2) the effective date of final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described herein.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

JPMorgan Chase & Co. (JPMC or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption 2016–15; Exemption Application No. D–11861]

Temporary Exemption

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed temporary exemption in the **Federal Register** at 81 FR 83357, proposing that certain entities with specified relationships to JPMC could continue to rely upon the relief provided by PTE 84–14 (49 FR 9494, March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010), notwithstanding the Conviction for a period of up to twelve (12) months beginning on the Conviction Date.

The Department is today granting this temporary exemption in order to protect ERISA-covered plans and IRAs from certain costs and/or investment losses that may arise to the extent entities with a corporate relationship to JPMC lose their ability to rely on PTE 84–14 as of the Conviction Date, as described in the proposed temporary exemption. The Department has proposed longer-term relief for the JPMC Affiliated QPAMs and the JPMC Related QPAMs to rely on PTE 84–14 notwithstanding the Conviction. The relief in this temporary exemption provides the Department more time to consider whether longer-term relief is warranted.

No relief from a violation of any other law is provided by this temporary exemption, including any criminal conviction described in the proposed temporary exemption. Furthermore, the Department cautions that the relief in this temporary exemption will terminate immediately if, among other things, an entity within the JPMC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the temporary exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this temporary exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the temporary exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed temporary exemption, published in the **Federal Register** at 81 FR 83357 on November 21, 2016. All comments and requests for a hearing were due by November 28, 2016. The Department received written comments from the Applicant, the substance of which is discussed below.

During the comment period, the Applicant submitted a request for the Department to make a number of revisions to the proposed exemption. Thereafter, the Applicant submitted additional information in support of its request. After considering these submissions, the Department has determined to make certain of the revisions sought by the Applicant. The revisions declined by the Department, as well as the revisions described below, will be reconsidered for purposes of the longer term relief published in the **Federal Register** on November 21, 2016 (81 FR 83372), in connection with Exemption Application Number D–11906.

Revision 1. Deletion of Reference to Investment Banking Division of JPMorgan Chase Bank in Section I(d) of the Proposed Exemption

Section I(d) of the proposed temporary exemption provides that ''[a] JPMC Affiliated QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM, to enter into any transaction with JPMC or the Investment Banking Division of JPMorgan Chase Bank, or engage JPMC or the Investment Banking Division of JPMorgan Chase Bank to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption[.]''

The Applicant requests that the Department modify this condition. The Applicant represents that, as of the date of the exemption application, JPMC Affiliated QPAMs managed approximately $100 billion in plan assets through collective investment trusts that use the custody and administration services of JPMC's Corporate and Investment Banking line of business (CIB), operating through JPMorgan Chase Bank. Similarly, the Applicant explains that certain plans managed by JPMC Affiliated QPAMs through separate accounts have independently selected CIB (operating through JPMorgan Chase Bank) as their trustee and/or custodian, and transactions directed by JPMC Affiliated QPAMs on behalf of such plans would necessarily require the trustee/custodian to provide services for a direct or indirect fee.

According to the Applicant, the wording of this proposed condition is tantamount to a denial, because of all of

the services CIB provides to client accounts. The Applicant states that the custody and administration services provided are fundamental to the operation of the investment funds it manages. The proposed condition would make it impossible for JPMorgan Chase Bank's collective investment trusts to function, or for plans managed by a JPMC Affiliated QPAM to select JPMorgan Chase Bank as their trustee or custodian. The Department concurs with this comment, and has revised this condition, accordingly.

Revision 2. Deletion of Reference to the Investment Banking Division of JPMorgan Chase Bank in Section I(g) of the Proposed Exemption

Section I(g) of the proposed temporary exemption provides that ''JPMC and the Investment Banking Division of JPMorgan Chase Bank will not provide discretionary asset management services to ERISA-covered plans or IRAs, and will not otherwise act as a fiduciary with respect to ERISA-covered plan and IRA assets[.]''

The Applicant represents that the CIB, operating through JPMorgan Chase Bank, manages over $7 billion of cash collateral for plans within its securities lending agent business in reliance on PTE 84–14. If JPMorgan Chase Bank cannot continue to provide these fiduciary services, the Applicant explains that the exemption would provide no relief for plans that use the Bank as a securities lending agent.

The Department concurs with this comment, and has revised the condition in this final temporary exemption. Therefore, Section I(g) of the final exemption provides that ''JPMC will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets; in accordance with this provision, JPMC will not be treated as violating the conditions of this exemption solely because it acted an investment advice fiduciary within the meaning of ERISA Section 3(21)(A)(ii) or Section 4975(e)(3)(B) of the Code.'' The condition is also being revised to allow JPMC to act as a fiduciary with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate.

Revision 3. Deletion of Reference to the Investment Banking Division of JPMorgan Chase Bank in Section I(h) of the Proposed Exemption

Section I(h)(1)(i) provides that ''[w]ithin four (4) months of the Conviction, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that: (i) [T]he asset management decisions of the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC, including the Investment Banking Division of JPMorgan Chase Bank[.]''

In its comment and in subsequent communications with the Department, the Applicant requests that Sections I(h)(1) and (2) be modified to allow the JPMC Affiliated QPAMs a period of up to six months following the Conviction to meet these requirements. The Department concurs with the Applicant's request. Therefore, in the final temporary exemption, the Department has modified Section I(h)(1) and (2) to provide that, respectively, ''Within six (6) months of the Conviction, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) . . .'' and ''Within six (6) months of the Conviction, each JPMC Affiliated QPAM must develop and implement a program of training (the Training). . . .''

The Applicant also seeks deletion of the condition's reference to the Investment Banking Division of JPMorgan Chase Bank for the reasons stated above. The Department concurs with this comment, and has revised the condition, accordingly.

Revision 4. References to the Conviction

The prefatory language of Section I of the proposed temporary exemption provides that ''the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined in Sections II(a) and II(b), respectively, will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the judgment of conviction against JPMC (the Conviction), as defined in Section II(c)), for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market.''

Furthermore, Section II(e) of the proposed temporary exemption provides that, in relevant part, ''[t]he term 'Conviction' means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court)(Case Number 3:15–cr–79–SRU), in connection with JPMC, through one of its euro/U.S. dollar (EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this temporary exemption, if granted, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of JPMC and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record[.]''

The Applicant requests that the Department modify the prefatory language in Section I and Section II(e) of the proposed temporary exemption, to more precisely define the term ''Conviction'' and narrow the scope of activity that is considered to be the ''conduct'' of a person or entity that is the subject of a Conviction. According to the Applicant, the reference to Conviction in the prefatory language of Section I of the proposed temporary exemption contains inaccurate and editorial language and may be confusing for plans and their counterparties. Furthermore, the Applicant states that the proposed definition of Conviction in Section II(e) is also inaccurate and contains an overly broad definition of the ''conduct'' that is subject to the Conviction. In this regard, the Applicant states that the language in Section II(e) expands the ''conduct'' that is considered the subject of the Conviction beyond that which is described as criminal in the Plea Agreement, and the reference to ''other official regulatory or judicial factual findings that are a part of this record'' is vague and could potentially refer to findings by regulators or in civil proceedings involving the Applicant and disclosed to the Department.

The Department concurs with the Applicant's comment and has modified the language in the final temporary exemption to provide that ''[t]he term 'Conviction' means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court)(Case Number 3:15–cr–79–SRU). For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses the conduct described in

Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in Case Number 3:15–cr–79–SRU.'' Furthermore, the Department deleted the parenthetical in paragraph (a) regarding the term ''participate in'' and reworded the ''participate in'' parenthetical in paragraph (c) to read: ''(For purposes of this paragraph (c), ''participated in'' includes approving or condoning the misconduct underlying the Conviction).''

Revision 5. The Policies and Training in Section I(h)

Section I(h)(1) of the proposed temporary exemption requires each JPMC Affiliated QPAM to ''develop, implement, maintain and follow'' the written policies and procedures (the Policies) described in Section I(h)(1)(i) through (vii). Furthermore, Section I(h)(2) requires each JPMC Affiliated QPAM to develop and implement a program of training (the Training)'' described therein. In its comment and in subsequent conversations with the Department, the Applicant requested that Sections I(h)(1) and (2) be modified to allow the JPMC Affiliated QPAMs a period of up to six (6) months following the date of the Conviction to meet these requirements. The Department concurs with the Applicant's request. Therefore, in the final temporary exemption, the Department has modified Section I(h)(1) and (2) to provide that, respectively, ''Within six (6) months of the Conviction Date, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) . . .'' and ''Within six (6) months of the Conviction Date, each JPMC Affiliated QPAM must develop and implement a program of training (the Training). . . .''

Revision 6. Indemnification Provision in Section I(i)

Section I(i)(1) of the proposed temporary exemption provides that ''[e]ffective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees: . . . ''(vii) [t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction[.]''

The Applicant requested that the Department modify the language of Sections I(i)(1) and I(i)(1)(vii) in order to narrow the scope of the contractual obligations in two respects. First, the Applicant requested that the contractual obligations described in Section I(i) apply only with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA under which the JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services *in reliance on PTE 84–14.*

The Department declines to make this revision. Often, parties enter into arrangements with financial institutions in reliance on their QPAM status, irrespective of whether PTE 84–14 is strictly needed or in circumstances where more than one exemption may be available. The broad applicability of the conditions of Section I(i) ensures that the parties' reliance is not misplaced; avoids needless disputes over the particular exemption relied upon by the QPAMs; and encourages a broad culture of compliance and accountability at the QPAMs, consistent with the rightful expectations of plans and IRAs that engage in transactions with QPAMs. A broad application of Section I(i) is in the interest of ERISA-covered plans and IRAs and protective of their rights. The JPMC Affiliated QPAMs should be held to a high standard of integrity with respect to all ERISA-covered plans and IRAs, and not just those with respect to which it relies on PTE 84–14.

Secondly, the Applicant requested that Section I(i)(1)(vii) be deleted, or alternatively, that the Department tie the provision to damages with a proximate causal connection to relevant conduct of the asset manager. The Applicant represents that the indemnification and hold harmless requirement in subparagraph (vii) would operate in an unfair manner because it is not limited to clients who are harmed through a direct, causal link to the loss of exemptive relief provided by PTE 84–14. According to the Applicant, the provision appears to allow ERISA-covered plans and IRAs to seek to recover damages: (a) That arise from violations and breaches by third parties, (b) that arise only tenuously from the manager's conduct, (c) that may be grossly unreasonable in amount, (d) for claims without merit, and (e) for claims in connection with accounts that do not rely on PTE 84–14.

The Department declines to make the requested revision, but agrees to modify the section to make it clear that the ''applicable laws'' referred to in Section I(i)(1)(vii) pertain to the fiduciary duties of ERISA and the prohibited transaction provisions of ERISA and the Code. The requirement to comply with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions is included in the Policies required under the exemption. Therefore, Section I(i)(1)(vii) of the temporary exemption, as granted, requires a JPMC Affiliated QPAM ''[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction.''

Revision 7. Restrictions on Withdrawals in Section I(i)

Section I(i)(1)(4) of the proposed temporary exemption requires that the JPMC Affiliated QPAMs must agree ''[n]ot to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of the actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors.'' The Department has modified Section I(i)(4) to make it clear that a lack of liquidity may include a range of similar circumstances where reasonable restrictions are necessary to protect remaining investors in a pooled fund. Furthermore, the Department has modified Section I(i)(4) in order to clarify that the limitation of adverse consequences to those resulting from a lack of liquidity, valuation issues, or regulatory reasons, is only required with respect to investments in a pooled fund subject to ERISA entered into after the Conviction Date. In any such event, the restrictions must be reasonable and last no longer than reasonably necessary to avoid the adverse consequences to investors in the fund.

Revision 8. Scope of Contractual Obligations in Section I(i)

The Department is revising the notice requirement in Section I(i)(2) to require that each JPMC Affiliated QPAM will provide a notice of its agreement to each ERISA-covered plan and IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, and to provide that such notice must be completed within six (6) months of the effective date of this temporary exemption.

Revision 9. Definition of ''JPMC Affiliated QPAM'' in Section II(a)

Section II(a) of the proposed temporary exemption precludes JPMC, the parent entity, from acting as a QPAM. The last sentence of this condition also erroneously states that JPMC is the ''division'' [that was] directly implicated by the conduct that is the subject of the Conviction.'' The Applicant represents that JPMC is not a ''division,'' but the parent company of an affiliated group. In response to this comment, the Department is removing this reference.

Revision 10. Revision of Section I(b) of the Proposed Exemption

The applicant represents that Section I(b) of the proposed exemption is not workable, as an individual can only receive compensation if the entity he works for receives compensation. The Department has revised this condition to read, ''The JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such JPMC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction, other than a non-fiduciary line of business within JPMorgan Chase Bank.''.

After giving full consideration to the record, the Department has decided to grant the temporary exemption, as described above. The complete application file (Application No. D–11861) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this temporary exemption, refer to the notice of proposed temporary exemption published on November 21, 2016 at 81 FR 83357.

Temporary Exemption Operative Language

Section I: Covered Transactions

Certain entities with specified relationships to JPMC (hereinafter, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined in Sections II(a) and II(b), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[8] notwithstanding the judgment of conviction against JPMC (the Conviction, as defined in Section II(e)),[9] for a period of up to twelve (12) months beginning on the date of the Conviction (the Conviction Date, as defined in Section II(f)), provided that the following conditions are satisfied:

(a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, and exercised no authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such JPMC QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of JPMC that is the subject of the Conviction;

(b) The JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such JPMC QPAMs) did not receive direct compensation, or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction, other than a non-fiduciary line of business within JPMorgan Chase Bank;

(c) The JPMC Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (c), ''participated in'' includes approving or condoning the misconduct underlying the Conviction);

(d) A JPMC Affiliated QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM, to enter into any transaction with JPMC, or to engage JPMC to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a JPMC Affiliated QPAM or a JPMC Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A JPMC Affiliated QPAM or a JPMC Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the JPMC Affiliated QPAM the JPMC Related QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate, JPMC will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; in accordance with this provision, JPMC will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) or section 4975(e)(3)(B) of the Code;

(h)(1) Within six (6) months of the Conviction Date, each JPMC Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC;

(ii) The JPMC Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The JPMC Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code

[8] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[9] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the JPMC Affiliated QPAM to regulators, including but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The JPMC Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plans and IRA clients;

(vi) The JPMC Affiliated QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant JPMC Affiliated QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, where such fiduciary is independent of JPMC; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of JPMC or beneficially owned by an employee of JPMC or its affiliates, such fiduciary does not need to be independent of JPMC. A JPMC Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered, or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Within six (6) months of the Conviction Date, each JPMC Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(i)(1) As of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and an ERISA-covered plan or IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services, each JPMC Affiliated QPAM agrees:

(i) To comply with ERISA and the Code with respect to each such ERISA-covered plan and IRA, as applicable; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA;

(ii) Not to require (or otherwise cause) the ERISA covered plan or IRA to waive, limit, or qualify the liability of the JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(iii) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the JPMC Affiliated QPAM for violating ERISA or the Code, or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary, which is independent of JPMC and its affiliates;

(iv) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the Conviction Date, the adverse consequences must relate to a lack of liquidity of the pooled fund's underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions are applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(v) Not to impose any fee, penalty, or charge for such termination or withdrawal, with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices, or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that each such fee is applied consistently and in like manner to all such investors;

(vi) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the JPMC Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary which is independent of JPMC, and its affiliates; and

(vii) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction;

(2) Within six (6) months of the date of the Conviction, each JPMC Affiliated QPAM will provide a notice of its agreement and obligations under this Section I(i) to each ERISA-covered plan and IRA for which a JPMC Affiliated QPAM provides asset management or other discretionary fiduciary services;

(j) The JPMC Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction;

(k) Each JPMC Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this temporary exemption have been met, for six (6) years following the date of any transaction for which such JPMC Affiliated QPAM relies upon the relief in the temporary exemption;

(l) During the effective period of this temporary exemption, JPMC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that JPMC or an affiliate enters into with the U.S.

Department of Justice to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and

(2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement; and

(m) A JPMC Affiliated QPAM or a JPMC Related QPAM will not fail to meet the terms of this temporary exemption solely because a different JPMC Affiliated QPAM or JPMC Related QPAM fails to satisfy a condition for relief under this temporary exemption, described in Sections I(c), (d), (h), (i), (j), and (k).

Section II: Definitions

(a) The term ''JPMC Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in Section VI(a) [10] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which JPMC is a current or future ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14). The term ''JPMC Affiliated QPAM'' excludes JPMC;

(b) The term ''JPMC Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which JPMC owns a direct or indirect five percent or more interest, but with respect to which JPMC is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

(c) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code;

(d) The term ''JPMC'' means JPMorgan Chase and Co., the parent entity, and does not include any subsidiaries or other affiliates;

(e) The term ''Conviction'' means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15–cr–79–SRU). For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses the conduct described in Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in Case Number 3:15–cr–79–SRU; and

(f) The term ''Conviction Date'' means the date that a judgment of Conviction against JPMC is entered by the District Court in connection with the Conviction.

Effective Date: This temporary exemption is effective for the period beginning on the Conviction Date until the earlier of: (1) The date that is twelve (12) months following the Conviction Date; or (2) the effective date of final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described herein.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

Barclays Capital Inc. (BCI or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption 2016–16; Exemption Application No. D–11862]

Temporary Exemption

On November 21, 2016, the Department of Labor (the Department) published a notice of proposed temporary exemption in the **Federal Register** at 81 FR 83365, proposing that certain entities with specified relationships to BCI could continue to rely upon the relief provided by PTE 84–14 (49 FR 9494, March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010), notwithstanding the Conviction for a period of up to twelve months beginning on the date of the Conviction.

No relief from a violation of any other law is provided by this temporary exemption, including any criminal conviction described in the proposed temporary exemption. Furthermore, the Department cautions that the relief in this temporary exemption will terminate immediately if, among other things, an entity within the BPLC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the temporary exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this temporary exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the temporary exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed temporary exemption, published in the **Federal Register** on November 21, 2016. All comments and requests for a hearing were due by November 28, 2016. The Department received written comments from the Applicant, the substance of which is discussed below.

During the comment period, the Applicant submitted a request for the Department to make a number of revisions to the proposed exemption. Thereafter, the Applicant submitted additional information in support of its request. After considering these submissions, the Department has determined to make certain of the revisions sought by the Applicant. The revisions declined by the Department, as well as the revisions described below, will be reconsidered for purposes of the longer term relief published in the **Federal Register** on November 21, 2016 (81 FR 83427) in connection with Exemption Application Number D–11910.

Revision 1. Replacement of Reference to BCI With BPLC in Section I of the Proposed Exemption

The Applicant states that BCI is identified in certain conditions in Section I, notwithstanding that BPLC is the entity that pled guilty to the felony. Accordingly, the Applicant requests removal of the reference to ''BCI'' in those conditions. The Department concurs with this comment, and has substituted BPLC, the entity convicted of the conduct underlying the Conviction, for BCI, where applicable in Section I of the exemption. The Department has also revised Section I(a) to include ''Barclays Related QPAMs,'' thus requiring that these QPAMs did not know of, have reason to know of, or participate in the criminal conduct of BPLC that is the subject of the Conviction.

Revision 2. Correction to Section I(f) of the Proposed Exemption

Section I(f) contains an unintended error and is revised to read as follows: ''A Barclays Affiliated QPAM or a Barclays Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would:

[10] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements, and has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

Further the criminal conduct that is the subject of the Conviction. . . .''

Revision 3. Clarification to Section I(g) of the Proposed Exemption

The Department is clarifying Section I(g) to provide that BPLC may not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) and (C), with respect to ERISA-covered plan and IRA assets; however, in accordance with that provision, BPLC will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii) or Section 4975(e)(3)(b) of the Code. The condition is also being revised to allow BPLC to act as a fiduciary with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate.

Revision 4. Modification to the Timeframe for BCI To Provide Notice of Its Obligations Under Section I(i)

The last paragraph of Section (I) of the proposed exemption provides that ''[w]ithin four (4) months of the date of the Conviction, each Barclays Affiliated QPAM will provide a notice of its obligations under this Section I(i) to each ERISA-covered plan and IRA for which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services.''

The Applicant states that BCI and its affiliates do not currently provide asset management or other discretionary fiduciary services to ERISA-covered plans or IRAs, and the four-month notice period has no purpose. Therefore the Applicant requests that this provision be modified to reflect that Barclays Affiliated QPAMs would in the future be required to provide notice prior to an engagement with an ERISA-covered plan or IRA subject to this temporary exemption, consistent with Sections I(h)(1) and I(h)(2). The Department concurs with this comment and has revised the condition accordingly.

Revision 5. References to the Conviction

The prefatory language of Section I of proposed temporary exemption provides that ''[i]f the proposed temporary exemption is granted, the Barclays Affiliated QPAMs and the Barclays Related QPAMs, as defined in Sections II(a) and II(b), respectively, will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding a judgment of conviction against Barclays PLC (BPLC) (the Conviction, as defined in Section II(c)), for engaging in a conspiracy to: (1) Fix the price of, or (2) eliminate competition in the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market. This temporary exemption will be effective for a period of up to twelve (12) months beginning on the Conviction Date (as defined in Section II(e) . . .''

Furthermore, Section II(e) of the proposed exemption provides, in relevant part, that ''[t]he term ''Conviction'' means the judgment of conviction against BPLC for violation of the Sherman Antitrust Act, 15 U.S.C. § 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court)(Case Number 3:15–cr–00077–SRU–1), in connection with BPLC, through certain of its euro/U.S. dollar (EUR/USD) traders, entering into and engaging in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere. For all purposes under this temporary exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of BPLC and/or their personnel, that is described in the Plea Agreement, (including the Factual Statement), and other official regulatory or judicial factual findings that are a part of this record[.]''

The Applicant requests that the Department modify the prefatory language in Section I and Section II(e) of the proposed temporary exemption, to more precisely define the term ''Conviction.'' According to the Applicant, the reference to Conviction in the prefatory language of Section I of the proposed temporary exemption is incomplete and inexact and may create confusion on whether the exemption condition is met, leading to possible disputes with counterparties to the detriment of plans.

The Department concurs with the Applicant's comment and has modified the relevant language in the final temporary exemption to provide that the term ''Conviction'' means the judgment of conviction against BPLC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court)(Case Number 3:15–cr–00077–SRU–1). For purposes of this exemption, ''conduct'' of any person or entity that is the subject of a ''Conviction'' encompasses the conduct described in Paragraph 4(g)-(j) of the Plea Agreement filed in the District Court in Case Number 3:15–cr–00077–SRU–1. The Department also deleted the parenthetical in paragraph I(a) regarding the term ''participate in'' and reworded the ''participate in'' parenthetical in paragraph I(c) to read: ''(for purposes of this paragraph (c), ''participated in'' includes approving or condoning the misconduct underlying the Conviction).''

Further, the Applicant notes that the term ''Conviction'' and ''Conviction Date'' are defined in Sections II(e) and II(f), respectively, rather than II(c) and II(e). The Department has corrected this inadvertent error.

Revision 6. Indemnification Provision in Section I(i)

Section I(i) of the proposed temporary exemption provides that ''[e]ffective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and an ERISA-covered plan or IRA for which such Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services, each Barclays Affiliated QPAM agrees:'' . . . ''(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction.''

The Applicant believes that this provision may operate in a manner that is fundamentally unfair as it is not limited to clients who are harmed through a direct, causal link to the loss of the exemptive relief provided by PTE 84–14. The Applicant states that the condition appears to allow plans and IRAs to seek to recover damages (i) that arise from violations and breaches by third parties, (ii) that arise only tenuously from the manager's conduct, (iii) that may be grossly unreasonable in amount, (iv) for claims without merit and (v) for claims in connection with accounts that do not rely on the relief provided by PTE 84–14.

Accordingly, the Applicant requests that that the Department delete this condition or, in the alternative, expressly tie the requirement to damages with a proximate causal connection to relevant conduct of the manager by rewording the condition as follows:

''(I)(i) [e]ffective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and an ERISA-covered plan or IRA under which such Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services in reliance on PTE 84–14, each Barclays Affiliated QPAM agrees: . . . (7) To indemnify and hold harmless the ERISA-covered plan or IRA for any reasonable damages involving such arrangement, agreement or contract and resulting directly from a violation of ERISA by such Barclays Affiliated QPAM, or, to the extent the Barclays Affiliated QPAM relies on the exemptive relief provided by PTE 84–14 under the arrangement, agreement or contract, the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than as a result of the Conviction. This condition does not require indemnification of indirect, special, consequential or punitive damages.''

The Department declines to make the requested revisions, but is modifying Section I(i)(7) to clarify that ''applicable laws'' refer to the fiduciary duties of ERISA and the prohibited transaction provisions of ERISA and the Code, which are likewise required to be included in the Policies described in Section I(h) of this exemption. Therefore, Section I(i)(7) of the temporary exemption, as granted, requires a Barclays Affiliated QPAM ''[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction.''

Revision 7. Restrictions on Withdrawals in Section I(i)

Section I(i)(4) of the proposed temporary exemption requires that Barclays Affiliated QPAMs must agree ''[n]ot to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Barclays Affiliated QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors.''

The Department has modified Section I(i)(4) to make it clear that a lack of liquidity may include a range of similar circumstances where reasonable restrictions are necessary to protect remaining investors in a pooled fund. Furthermore, the Department has modified Section I(i)(4) in order to clarify that the limitation of adverse consequences to those resulting from a lack of liquidity, valuation issues, or regulatory reasons, is only required with respect to investments in a pooled fund subject to ERISA entered into after the Conviction Date. In any such event, the restrictions must be reasonable and last no longer than reasonably necessary to avoid the adverse consequences to investors in the fund.

Therefore, the language of Section I(i)(4) in the final temporary exemption requires a Barclays Affiliated QPAM ''[n]ot to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Barclays Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the U.S. Conviction Date, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.''

Revision 8. Scope of Contractual Obligations in Section I(i)

The Department, own its on motion, is making a correction to Section I(i)(1) to revise the phrase at the end of Section I(i)(1)(i) that reads ''with respect to each such ERISA-covered plan and IRA'' to read in the final temporary exemption as follows: ''as applicable, with respect to each such ERISA-covered plan and IRA.'' The Department is also revising the notice requirement in Section I(i) to require that each Barclays Affiliated QPAM will provide a notice of its agreement under Section I(i) to each ERISA-covered plan and IRA for which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services.

Revision 9. Correction of the Term ''Barclays Affiliated QPAM''

Section II(a) of the proposed temporary exemption precludes both BPLC and BCI from acting as a QPAM. The Applicant represents that, as noted above, BCI was not the subject of the Conviction and should not be excluded from the temporary exemption. The Department concurs and has revised Section II(a) of the final temporary exemption accordingly.

After giving full consideration to the record, the Department has decided to grant the temporary exemption, as described above. The complete application file (Application No. D–11862) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this temporary exemption, refer to the notice of proposed temporary exemption published on November 21, 2016 at 81 FR 83365.

Temporary Exemption Operative Language

Section I: Covered Transactions

Certain entities with specified relationships to BCI (hereinafter, the Barclays Affiliated QPAMs and the Barclays Related QPAMs, as defined in Sections II(a) and II(b), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[11] notwithstanding the judgment of conviction against Barclays PLC (BPLC) (the Conviction, as defined in Section II(e)),[12] for a period of up to

[11] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[12] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereo . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has

twelve (12) months beginning on the date of the Conviction (the Conviction Date, as defined in Section II(f)), provided that the following conditions are satisfied:

(a) Other than certain individuals who worked for a non-fiduciary business under BPLC, who had no responsibility for, and exercised no authority in connection with, the management of plan assets and who are no longer employed by BPLC the Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, agents other than BPLC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, have reason to know of, or participate in the criminal conduct of BPLC that is the subject of the Conviction;

(b) The Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, agents other than BPLC, and employees of such QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction;

(c) The Barclays Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction (for purposes of this paragraph (c), ''participated in'' includes approving or condoning the misconduct underlying the Conviction);

(d) A Barclays Affiliated QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such Barclays Affiliated QPAM, to enter into any transaction with BPLC, or to engage BPLC, to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a Barclays Affiliated QPAM or a Barclays Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A Barclays Affiliated QPAM or a Barclays Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the Barclays Affiliate QPAM or the Barclays Related QPAM or its affiliates or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for their own employees or the employees of an affiliate, BPLC will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C), with respect to ERISA-covered plan and IRA assets; in accordance with this provision, BPLC will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii) or Section 4975(e)(3)(b) of the Code;

(h)(1) Prior to a Barclays Affiliated QPAM's engagement by any ERISA-covered plan or IRA for discretionary asset management services, the Barclays Affiliated QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the Barclays Affiliated QPAM are conducted independently of the corporate management and business activities of BPLC;

(ii) The Barclays Affiliated QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The Barclays Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the Barclays Affiliated QPAM to regulators, including but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The Barclays Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plans and IRA clients;

(vi) The Barclays Affiliated QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with, an item in subparagraphs (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance, and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM, and an appropriate fiduciary of any affected ERISA-covered plan or IRA, where such fiduciary is independent of BPLC; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of BPLC or beneficially owned by an employee of BPLC or its affiliates, such fiduciary does not need to be independent of BPLC. A Barclays Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Prior to a Barclays Affiliated QPAM's engagement by any ERISA covered plan or IRA for discretionary asset management services, the Barclays Affiliated QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant Barclays Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(i) Effective as of date of this temporary exemption with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and an ERISA-covered plan or IRA for which such Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services, each Barclays Affiliated QPAM agrees:

been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

(1) To comply with ERISA and the Code with respect to each such ERISA-covered plan and IRA, as applicable; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA;

(2) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the Barclays Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(3) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Barclays Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary, who is independent of BPLC, and its affiliates;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Barclays Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the U.S. Conviction Date, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Barclays Affiliated QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BPLC, and its affiliates; and

(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such Barclays Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction.

Prior to a Barclays Affiliated QPAM's engagement with an ERISA-covered plan or IRA, the Barclays Affiliated QPAM will provide a notice of its agreement and obligations under this Section I(i) to each ERISA-covered plan and IRA for which a Barclays Affiliated QPAM provides asset management or other discretionary fiduciary services;

(j) The Barclays Affiliated QPAMs comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84–14 that are attributable to the Conviction;

(k) Each Barclays Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this temporary exemption have been met, for six (6) years following the date of any transaction for which such Barclays Affiliated QPAM relies upon the relief in the temporary exemption;

(l) During the effective period of this temporary exemption, BPLC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that BPLC or an affiliate enters into with the U.S. Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and

(2) Immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreements; and

(m) A Barclays Affiliated QPAM or a Barclays Related QPAM will not fail to meet the terms of this temporary exemption solely because a different Barclays Affiliated QPAM or Barclays Related QPAM fails to satisfy a condition for relief under this temporary exemption, described in Sections I(c), (d), (h), (i), (j) and (k).

Section II: Definitions

(a) The term ''Barclays Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in Section VI(a) [13] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which BPLC is a current or future ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14). The term ''Barclays Affiliated QPAM'' excludes BPLC.

(b) The term ''Barclays Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which BPLC owns a direct or indirect five percent or more interest, but with respect to which BPLC is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

(c) The terms ''ERISA-covered plan'' and ''IRA'' mean, respectively, a plan subject to Part 4 of Title I of ERISA and a plan subject to section 4975 of the Code;

(d) The term ''BPLC'' means Barclays PLC, the parent entity, and does not include any subsidiaries or other affiliates;

(e) The term ''Conviction'' means the judgment of conviction against BPLC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court), Case Number 3:15–cr–00077–SRU–1. For all purposes under this temporary exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses the conduct described in Paragraph 4(g)–(j) of the Plea Agreement filed in the District Court in Case Number 3:15–cr–00077–SRU–1; and

(f) The term ''Conviction Date'' means the date that a judgment of Conviction against BPLC is entered by the District Court in connection with the Conviction.

Effective Date: This temporary exemption is effective for the period

[13] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

beginning on the Conviction Date until the earlier of: (1) The date that is twelve months following the Conviction Date; or (2) the effective date of a final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described herein.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

UBS Assets Management (Americas) Inc.; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O'Connor LLC; and Certain Future Affiliates in UBS's Asset Management and Wealth Management Americas Divisions (Collectively, the Applicants or the UBS QPAMs); Located in Chicago, Illinois; Hartford, Connecticut; New York, New York; and Chicago, Illinois, Respectively

[Prohibited Transaction Exemption 2016–17; Exemption Application No. D–11863]

Temporary Exemption

On November 17, 2016, the Department of Labor (the Department) published a notice of proposed temporary exemption in the **Federal Register** at 81 FR 81158, proposing that certain entities with specified relationships to UBS, AG (hereinafter, the UBS QPAMs) could continue to rely on the exemptive relief provided by PTE 84–14 (49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010)), notwithstanding the ''2013 Conviction'' against UBS Securities Japan Co., Ltd. entered on September 18, 2013 and the ''2016 Conviction'' against UBS AG (the 2013 Conviction and the 2016 Conviction are described in more detail in the proposed temporary exemption and further defined in Section II(a) of this final temporary exemption), for a period of up to twelve months beginning on the date that a judgment of conviction is entered against UBS in the 2016 Conviction.

No relief from a violation of any other law is provided by this temporary exemption, including any criminal conviction described in the proposed temporary exemption. Furthermore, the Department cautions that the relief in this temporary exemption will terminate immediately if, among other things, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the 2013 or the 2016 Conviction) during the effective period of the temporary exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The terms of this temporary exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the temporary exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed temporary exemption, published in the **Federal Register** at 81 FR 81158 on November 17, 2016. All comments and requests for hearing were due by November 22, 2016. The Applicant submitted a written comment letter requesting certain revisions to the proposed temporary exemption, which was further supplemented through additional correspondence, as requested by the Department. After considering the comment letter, the Department determined that some, but not all, of the requested revisions have merit, and has revised the exemption in the manner described below. All requested revisions and comments, accepted or omitted, will be reconsidered for purposes of the longer term relief proposed in the **Federal Register** at 81 FR 83385 on November 21, 2016, in connection with Exemption Application Number D–11907. The requested revisions and clarifications, and the Department's responses thereto, are described below.

Revision 1. The Policies and Training

Section I(h)(1) of the proposed temporary exemption requires each UBS QPAM to ''immediately develop, implement, maintain and follow'' the written policies and procedures (the Policies) described in Section I(h)(1)(i) through (vii). Furthermore, Section I(h)(2) requires each UBS QPAM to ''immediately develop and implement a program of training (the Training)'' described therein. In its comment and in subsequent conversations with the Department, the Applicants requested that Sections I(h)(1) and (2) be modified to allow the UBS QPAMs a period of up to six months following the date of the 2016 Conviction to meet these requirements. The Department concurs with the Applicants' request. Therefore, in the final temporary exemption, the Department has modified Section I(h)(1) and (2) to provide that, respectively, ''Within six (6) months of the Conviction Date, each UBS QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) . . .'' and ''Within six (6) months of the Conviction Date, each UBS QPAM must develop and implement a program of training (the Training) . . . .''

Revision 2. Timing of Audit Under PTE 2013–09

Section I(i)(1) of the proposed temporary exemption requires that each UBS QPAM submit to an independent audit to evaluate the adequacy of, and the UBS QPAM's compliance with, the Policies and Training requirements of the exemption. The audit must cover the twelve month period beginning on the Conviction Date, and be completed no later than six months thereafter. Section I(i)(1) of this temporary exemption provides further that, ''[f]or time periods prior to the Conviction Date and covered under PTE 2013–09, the audit requirements in Section (g) of PTE 2013–09 will remain in effect.'' [14]

In its comment, the Applicants state that the UBS QPAMs are currently subject to a short audit period beginning on September 18, 2016, the end of the most recent audit period under PTE 2013–09, and ending on the Conviction Date, currently scheduled for January 5, 2017. The Applicants state that it is unclear when the audit under this short period must be completed and when the written report would be due, because the twelve-month audit period under this temporary exemption begins on the Conviction Date. UBS requests that this short audit period under PTE 2013–09 be combined with the twelve month audit period required by this temporary exemption. In the alternative, the Applicants request that the Department clarify when the final audit and written report required under PTE 2013–09 is due to be completed and submitted to the Department.

The Department concurs with the Applicants' request that the short audit period may be combined with the twelve-month audit period under this temporary exemption, at the election of the independent auditor, and has modified the language of Section I(i)(1) as such. Section I(i)(1) has also be modified to clarify when the final audit under PTE 2013–09 must be completed,

[14] Prior to the Conviction Date, the effective date of this temporary exemption, the UBS QPAMs were required to rely on the relief provided by PTE 2013–09 in order to engage in prohibited transactions covered under PTE 84–14. In complying with PTE 2013–09, the QPAMs were subject to an annual independent audit covering the twelve month period beginning on the September 18th of each year. According to the Applicants, the last full annual audit period ended on September 18, 2016.

in the event that the short audit period is not so combined with the twelve-month audit period under this temporary exemption.

Revision 3. Restrictions on Withdrawals in Section I(j)

The UBS QPAMs request a revision to Section I(j) of the proposed temporary exemption, which imposes certain contractual obligations that UBS QPAMs must agree to enter into in connection with any arrangement, agreement, or contract between such UBS QPAMs and ERISA-covered plans and IRAs for which such QPAMs provide asset management or other discretionary fiduciary services. Section I(j)(4) of the proposed temporary exemption requires that the UBS QPAMs must agree ''[n]ot to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the UBS QPAM (including any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM), with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors as a result of an actual lack of liquidity of the underlying assets, provided that such restrictions are applied consistently and in like manner to all such investors.''

The Applicants request that the Department revise Section I(j)(4) in order to allow reasonable restrictions on a plan's ability to terminate or withdraw from its arrangement with a UBS QPAM involving an investment in a pooled fund, for reasons other than an ''actual lack of liquidity.'' According to the Applicants, these circumstances include (but are not limited to) situations where (i) it would be impracticable to establish an accurate fair market value for some of the underlying assets in a commingled fund; and (ii) there are ''holdbacks'' pending the receipt of audited financial statements for the fund, so that final asset values have not yet been determined. The Applicants have proposed that Section I(j)(4) be revised to provide that ''in the event such withdrawal or termination may have adverse consequences for all other investors as the result of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, provided that such restrictions are applicable to all such investors.''

The Department has modified Section I(j)(4) to make it clear that a ''lack of liquidity'' may include a range of circumstances where reasonable restrictions are necessary to protect remaining investors in a pooled fund. Further, the Department has added language to clarify that, in any such event the restrictions must be reasonable and last no longer than reasonably necessary to remedy the adverse consequences.

Therefore, the Department has modified Section I(j)(4) of this temporary exemption to require UBS QPAMs: ''Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the UBS QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the Conviction Date, the adverse consequences must relate to of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences.''

Revision 4. Indemnification Provisions in Section I(j)

Section I(j) of the proposed temporary exemption provides that, ''[e]ffective as of the effective date of this temporary exemption, with respect to any arrangement, agreement, or contract between a UBS QPAM and an ERISA-covered plan or IRA for which a UBS QPAM provides asset management or other discretionary fiduciary services, each UBS QPAM agrees'' to comply with certain obligations described in Sections I(j)(1) through (7). Specifically, Section I(j)(7) requires such UBS QPAM ''[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of applicable laws, a breach of contract, or any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions.''

The Department, is modifying Section I(i)(7) to clarify that the ''applicable laws'' referred to in Section I(i)(7) refer to the fiduciary duties of ERISA and the prohibited transaction provisions of ERISA and the Code. The requirement to comply with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions is also included in the Policies required under the exemption. Therefore, Section I(i)(7) of the temporary exemption, as granted, requires a UBS QPAM ''[t]o indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions.''

The Department is also revising the notice requirement in Section I(j)(8) to require that each UBS QPAM will provide a notice of its agreement under Section I(j) to each ERISA-covered plan and IRA for which a UBS QPAM provides asset management or other discretionary fiduciary services within six (6) months of the effective date of this temporary exemption.

Revision 5. Modification of Section I(g)

Section I(g) of the proposed temporary exemption provides that ''UBS and UBS Securities Japan will not provide discretionary asset management services to ERISA-covered plans or IRAs, nor will otherwise act as a fiduciary with respect to ERISA-covered plan or IRA assets.'' The Department has modified Section I(g) in order to clarify that UBS and UBS Securities Japan will not violate the condition in the event that they inadvertently become investment advice fiduciaries and that UBS can act as a fiduciary for plans that it sponsors for its own employees or employees of an affiliate.

Therefore, Section I(g) of the temporary exemption, as granted, provides that ''Other than with respect to plans sponsored or maintained by UBS for its own employees or employees of an affiliate, UBS and UBS Securities Japan will not act as fiduciaries within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C) with respect to ERISA-covered plan or IRA assets; in accordance with this provision, UBS and UBS Securities Japan will not be treated as violating the conditions of

this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii), or Code Section 4975(e)(3)(B).''

Revision 6. Definition of Convictions and FX Misconduct

The Applicants also request that the Department modify the language in Section II(a) regarding the definition of ''Convictions.'' Section II(a) of the proposed temporary exemption provides that ''for all purposes under this temporary exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of UBS and/or their personnel, that is described in the Plea Agreement, (including Exhibits 1 and 3 attached thereto), and other official regulatory or judicial factual findings that are a part of this record.'' Specifically, the UBS QPAMs request that the Department strike the reference to ''official regulatory or judicial factual findings that are a part of this record,'' because, according to the Applicants, it is unclear what documents are being referred to. Furthermore, the Applicants state that they are unaware of any other documents having been made a part of the record besides the Plea Agreement, (including Exhibits 1 and 3 attached thereto). The Applicants suggest that the Department modify the language of Section II(a) to provide that the ''conduct'' of any person or entity that is ''subject of [a] Conviction'' encompasses any conduct of UBS and/or their personnel, that is described in Exhibit 3 to the Plea Agreement entered into between UBS AG and the Department of Justice Criminal Division, on May 20, 2015, in connection with Case Number 3:15–cr–00076–RNC, and Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with Case Number 3:12–cr–00268–RNC.

The Department concurs with the applicant and has removed the reference to ''official regulatory or judicial factual findings that are a part of this record,'' from the definition of ''Convictions'' in Section II(a). Furthermore, the Department has modified the language in Section II(a) to provide that the '' 'conduct' of any person or entity that is the 'subject of [a] Conviction' encompasses any conduct of UBS and/or their personnel, that is described (i) in Exhibit 3 to the Plea Agreement entered into between UBS AG and the Department of Justice Criminal Division, on May 20, 2015, in connection with Case Number 3:15–cr–00076–RNC, and (ii) Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with Case Number 3:12–cr–00268–RNC.''

In addition to modifying to the definition of ''Convictions'' in Section II(a), the Department also deleted the parenthetical in Section I(a) regarding the term ''participate in'' and reworded the ''participate in'' parenthetical in Section I(c) to read: ''(for purposes of this paragraph (c), ''participated in'' includes approving or condoning the misconduct underlying the Conviction).''

The applicant has also requested the Department revise the definition of ''FX Misconduct'' in Section II(e) of the temporary exemption to limit the term to the conduct described in ''Paragraph 15 of Exhibit 1 of the Plea Agreement (Factual Basis for Breach).'' The Department declines to make the requested change to the definition of ''FX Misconduct'' in Section II(e). The Department understands that, based on the record, the Department of Justice terminated UBS AG's 2012 Non-Prosecution Agreement (the NPA) related to UBS's fraudulent submission of LIBOR rates as a result of a determination that UBS engaged in deceptive currency trading and sales practices, as well as collusive conduct in certain FX markets. Thus, narrowing the definition of the FX Misconduct to include only paragraph 15 of Exhibit 1 of the Plea Agreement would not appropriately reflect the misconduct of UBS employees in regard to the FX markets that was taken into consideration in the breach of the NPA.

Revision 7. Technical Corrections and Clarifications

The Department is making a technical correction to the Section I(j) to clarify the language in that Section. In this regard, the Department is revising the phrase at the end of Section I(j)(1) that reads ''as applicable'' to read in the final temporary exemption as follows: ''as applicable, with respect to each such ERISA-covered plan and IRA.'' The Department intended for each UBS QPAM to contractually obligate itself to apply the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, to all ERISA-covered plans and IRAs for which such QPAM provides asset management or other discretionary fiduciary services. Therefore, the revised Section I(j)(1) in the final temporary exemption will require that each UBS QPAM agrees ''[t]o comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA.''

The Applicants' comment makes certain clarifications to the Summary of Facts and Representations in the proposed temporary exemption. The proposed temporary exemption provides at 81 FR 81163 that UBS adopted and began to implement an automated system to monitor transactions covering the all asset classes in 2013. However, the Applicants note in their comment that such implementation began in early 2014. In addition, the proposed temporary exemption at 81 FR 81163 states that UBS has prohibited the use of mobile phones on trading floors. However, the Applicants note in their comment that UBS has prohibited the use of personal mobile phones on trading floors for all investment bank sales and trading staff. The Department takes note of the Applicants' clarifications.

After giving full consideration to the entire record, the Department has decided to grant the temporary exemption. The complete application file for the temporary exemption (Exemption Application No. D–11863), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published in the **Federal Register** on November 17, 2016 at 81 FR 81158.

Temporary Exemption Operative Language

Section I: Covered Transactions

Certain entities with specified relationships to UBS, AG (hereinafter, the UBS QPAMs as further defined in Section II(b)) shall not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84–14 (PTE 84–14),[15]

[15] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70

Continued

notwithstanding the ''2013 Conviction'' against UBS Securities Japan Co., Ltd. entered on September 18, 2013 and the ''2016 Conviction'' against UBS (collectively the Convictions, as further defined in Section II(a)),[16] for a period of up to twelve months beginning on the Conviction Date (as defined in Section II(d)), provided that the following conditions are satisfied:

(a) The UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) did not know of, have reason to know of, or participate in: (1) The FX Misconduct; or (2) the criminal conduct that is the subject of the Convictions;

(b) The UBS QPAMs (including their officers, directors, agents other than UBS, and employees of such UBS QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with: (1) The FX Misconduct; or (2) the criminal conduct that is the subject of the Convictions;

(c) The UBS QPAMs will not employ or knowingly engage any of the individuals that participated in: (1) The FX Misconduct or (2) the criminal conduct that is the subject of the Convictions (for purposes of this Section I(c), ''participated in'' includes approving or condoning the FX Misconduct or the misconduct that is the subject of the Convictions);

(d) A UBS QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such UBS QPAM, to enter into any transaction with UBS or UBS Securities Japan or engage UBS or UBS Securities Japan to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the UBS QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions;

(f) A UBS QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the FX Misconduct or the criminal conduct that is the subject of the Convictions; or cause the UBS QPAM, its affiliates or related parties to directly or indirectly profit from the FX Misconduct or the criminal conduct that is the subject of the Convictions;

(g) Other than with respect to plans sponsored or maintained by UBS for its own employees or employees of an affiliate, UBS and UBS Securities Japan will not act as fiduciaries within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) or (C) with respect to ERISA-covered plan or IRA assets; in accordance with this provision, UBS and UBS Securities Japan will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii), or Code Section 4975(e)(3)(B);

(h)(1) Within six (6) months of the Conviction Date, each UBS QPAM must develop, implement, maintain, and follow written policies and procedures (the Policies) requiring and reasonably designed to ensure that:

(i) The asset management decisions of the UBS QPAM are conducted independently of UBS's corporate management and business activities, including the corporate management and business activities of the Investment Bank division and UBS Securities Japan;

(ii) The UBS QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, and does not knowingly participate in any violation of these duties and provisions with respect to ERISA-covered plans and IRAs;

(iii) The UBS QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs;

(iv) Any filings or statements made by the UBS QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) The UBS QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients;

(vi) The UBS QPAM complies with the terms of this temporary exemption; and

(vii) Any violation of, or failure to comply with, an item in subparagraph (ii) through (vi), is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon the discovery of such failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM, the independent auditor responsible for reviewing compliance with the Policies, and an appropriate fiduciary of any affected ERISA-covered plan or IRA that is independent of UBS; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of UBS or beneficially owned by an employee of UBS or its affiliates, such fiduciary does not need to be independent of UBS. A UBS QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance promptly when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Within six (6) months of the Conviction Date, each UBS QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) Be set forth in the Policies and at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this temporary exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code;

(i)(1) Each UBS QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the

FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[16] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain criminal activity therein described.

adequacy of, and the UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit must cover the twelve month period that begins on the Conviction Date, and must be completed no later than six (6) months after the twelve month period. For time periods prior to the Conviction Date and covered by the audit required pursuant to PTE 2013–09, the audit requirements in Section (g) of PTE 2013–09 will remain in effect. The auditor may, at its own discretion, elect to combine the twelve-month audit period required under this temporary exemption with the period of time from September 18, 2016 until the effective date of this temporary exemption, such that each period, though audited under the standards applicable to that period, will be covered in a single audit report issued no later than six (6) months after the twelve-month period that begins on the Conviction Date. If the final audit period under PTE 2013–09 is not combined with the twelve-month audit required under this temporary exemption, the final audit period under PTE 2013–09 must be completed and submitted within six (6) months of the effective date of this temporary exemption;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each UBS QPAM and, if applicable, UBS, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel;

(3) The auditor's engagement must specifically require the auditor to determine whether each UBS QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this temporary exemption and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each UBS QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving ERISA-covered plans and IRAs sufficient in size and nature to afford the auditor a reasonable basis to determine the operational compliance with the Policies and Training;

(5) On or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding: The adequacy of the UBS QPAM's Policies and Training; the UBS QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective UBS QPAM's noncompliance with the written Policies and Training described in Section I(h) above. Any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective UBS QPAM must be promptly addressed by such UBS QPAM, and any action taken by such UBS QPAM to address such recommendations must be included in an addendum to the Audit Report (which addendum is completed prior to the certification described in Section I(i)(7) below). Any determination by the auditor that the respective UBS QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the UBS QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the UBS QPAM has actually implemented, maintained, and followed the Policies and Training required by this temporary exemption;

(6) The auditor must notify the respective UBS QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this temporary exemption; addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this temporary exemption and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee, the Audit Committee, and the Corporate Culture and Responsibility Committee of UBS's Board of Directors are provided a copy of each Audit Report; and a senior executive officer of UBS's Compliance and Operational Risk Control function must review the Audit Report for each UBS QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each UBS QPAM must provide its certified Audit Report, by regular mail to: The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW., Suite 400, Washington, DC 20001–2109, no later than 45 days following its completion. The Audit Report will be part of the public record regarding this temporary exemption. Furthermore, each UBS QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such UBS QPAM;

(10) Each UBS QPAM and the auditor must submit to OED: (A) Any engagement agreement entered into pursuant to the engagement of the auditor under this temporary exemption; and (B) any engagement agreement entered into with any other entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this temporary exemption no later than six (6) months after the Conviction Date (and one month after the execution of any agreement thereafter);

(11) The auditor must provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan; audit testing; identification of any instance of noncompliance by the relevant UBS QPAM; and an explanation of any corrective or remedial action taken by the applicable UBS QPAM; and

(12) UBS must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until UBS demonstrates to the Department's satisfaction that such new auditor is independent of UBS, experienced in the matters that are the subject of the temporary exemption and capable of making the determinations required of this temporary exemption;

(j) As of the Conviction Date, with respect to any arrangement, agreement,

or contract between a UBS QPAM and an ERISA-covered plan or IRA for which such UBS QPAM provides asset management or other discretionary fiduciary services, each UBS QPAM agrees:

(1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, as applicable, with respect to each such ERISA-covered plan and IRA;

(2) Not to require (or otherwise cause) the ERISA-covered plan or IRA to waive, limit, or qualify the liability of the UBS QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(3) Not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the UBS QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS;

(4) Not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the UBS QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the Conviction Date, the adverse consequences must relate to of a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from immediately redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the UBS QPAM for a violation of such agreement's terms, except for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS and its affiliates; and

(7) To indemnify and hold harmless the ERISA-covered plan or IRA for any damages resulting from a violation of ERISA's fiduciary duties and of ERISA and the Code's prohibited transaction provisions, a breach of contract, or any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions;

(8) Within six (6) months of the effective date of this temporary exemption each UBS QPAM will provide a notice of its agreement and obligations under this Section I(j) to each ERISA-covered plan and IRA for which a UBS QPAM provides asset management or other discretionary fiduciary services;

(k) The UBS QPAMs comply with each condition of PTE 84–14, as amended, with the sole exceptions of the violations of Section I(g) of PTE 84–14 that are attributable to the Convictions;

(l) UBS imposes its internal procedures, controls, and protocols on UBS Securities Japan to: (1) Reduce the likelihood of any recurrence of conduct that that is the subject of the 2013 Conviction, and (2) comply in all material respects with the Business Improvement Order, dated December 16, 2011, issued by the Japanese Financial Services Authority;

(m) UBS complies in all material respects with the audit and monitoring procedures imposed on UBS by the United States Commodity Futures Trading Commission Order, dated December 19, 2012;

(n) Each UBS QPAM will maintain records necessary to demonstrate that the conditions of this temporary exemption have been met, for six (6) years following the date of any transaction for which such UBS QPAM relies upon the relief in the temporary exemption;

(o) During the effective period of this temporary exemption UBS: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that UBS or any of its affiliates enters into with the U.S. Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement; and

(p) A UBS QPAM will not fail to meet the terms of this temporary exemption solely because a different UBS QPAM fails to satisfy a condition for relief under this temporary exemption described in Sections I(c), (d), (h), (i), (j), (k), and (n).

Section II: Definitions

(a) The term ''Convictions'' means the 2013 Conviction and the 2016 Conviction. The term ''2013 Conviction'' means the judgment of conviction against UBS Securities Japan Co. Ltd. in Case Number 3:12–cr–00268–RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United Sates Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates. The term ''2016 Conviction'' means the anticipated judgment of conviction against UBS AG in Case Number 3:15–cr–00076–RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS's submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010. For all purposes under this proposed temporary exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses any conduct of UBS and/or their personnel, that is described (i) in Exhibit 3 to the Plea Agreement entered into between UBS AG and the Department of Justice Criminal Division, on May 20, 2015, in connection with Case Number 3:15–cr–00076–RNC, and (ii) Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with Case Number 3:12–cr–00268–RNC;

(b) The term ''UBS QPAM'' means UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and any future entity within the

Asset Management or the Wealth Management Americas divisions of UBS AG that qualifies as a ''qualified professional asset manager'' (as defined in Section VI(a) [17] of PTE 84–14) and that relies on the relief provided by PTE 84–14 and with respect to which UBS AG is an ''affiliate'' (as defined in Part VI(d)(1) of PTE 84–14). The term ''UBS QPAM'' excludes the parent entity, UBS AG and UBS Securities Japan.

(c) The term ''UBS'' means UBS AG.

(d) The term ''Conviction Date'' means the date that a judgment of conviction against UBS is entered in the 2016 Conviction.

(e) The term ''FX Misconduct'' means the conduct engaged in by UBS personnel described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS AG and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15–cr–00076–RNC filed in the U.S. District Court for the District of Connecticut.

(f) The term ''UBS Securities Japan'' means UBS Securities Japan Co. Ltd, a wholly-owned subsidiary of UBS incorporated under the laws of Japan.

(g) The term ''Plea Agreement'' means the Plea Agreement (including Exhibits 1 and 3 attached thereto) entered into between UBS AG and the Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15–cr–00076–RNC filed in the U.S. District Court for the District of Connecticut.

Effective Date: This temporary exemption is effective for the period beginning on the date that a judgment of conviction against UBS is entered in Case Number 3:15–cr–00076–RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 (the Conviction Date), and ending on the earlier of: The date that is twelve months following the Conviction Date; or the effective date of a final agency action made by the Department in connection with Exemption Application No. D–11907, an application for long-term exemptive relief for the covered transactions described herein.

FOR FURTHER INFORMATION CONTACT: Brian Mica, telephone (202) 693–8402, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 14th day of December, 2016.

Lyssa E. Hall,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2016–30566 Filed 12–21–16; 8:45 am]

BILLING CODE 4510–29–P

[17] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

FEDERAL REGISTER

Vol. 81 Thursday,

No. 246 December 22, 2016

Part III

Department of Health and Human Services

45 CFR Parts 144, 146, 147, et al.

Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2018; Amendments to Special Enrollment Periods and the Consumer Operated and Oriented Plan Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 144, 146, 147, 148, 153, 154, 155, 156, 157, and 158

[CMS–9934–F; CMS–9933–F]

RIN 0938–AS95, RIN 0938–AS87

Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2018; Amendments to Special Enrollment Periods and the Consumer Operated and Oriented Plan Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule sets forth payment parameters and provisions related to the risk adjustment program; cost-sharing parameters and cost-sharing reductions; and user fees for Federally-facilitated Exchanges and State-based Exchanges on the Federal platform. It also provides additional guidance relating to standardized options; qualified health plans; consumer assistance tools; network adequacy; the Small Business Health Options Programs; stand-alone dental plans; fair health insurance premiums; guaranteed availability and guaranteed renewability; the medical loss ratio program; eligibility and enrollment; appeals; consumer-operated and oriented plans; special enrollment periods; and other related topics.

DATES: These regulations are effective January 17, 2017.

FOR FURTHER INFORMATION CONTACT:

Jeff Wu, (301) 492–4305, Lindsey Murtagh, (301) 492–4106, or Michelle Koltov, (301) 492–4225 for general information.

Lisa Cuozzo, (410) 786–1746, for matters related to fair health insurance premiums, guaranteed renewability, and single risk pool.

Kelly Drury, (410) 786–0558, or Krutika Amin, (301) 492–5153, for matters related to risk adjustment.

Adrianne Patterson, (410) 786–0686, for matters related to sequestration, risk adjustment data validation discrepancies, and administrative appeals.

Emily Ames, (301) 492–4246, for matters related to language access.

Dana Krohn, (301) 492–4412, for matters related to periodic data matching, redeterminations of advance payments of the premium tax credit, and appeals.

Rachel Arguello, (301) 492–4263, for matters related to Exchange special enrollment periods.

Jack Lavelle, (202) 631–2971, for matters related to premium payment, billing, and terminations due to fraud.

Christelle Jang, (410) 786–8438, for matters related to the Small Business Health Options Program (SHOP).

Krutika Amin, (301) 492–5153, for matters related to the Federally-facilitated Exchange user fee.

Leigha Basini, (301) 492–4380, for matters related to mid-year withdrawals, and other standards for QHP issuers.

Ielnaz Kashefipour, (301) 492–4376, for matters related to standardized options.

Rebecca Zimmermann, (301) 492–4396, for matters related to stand-alone dental plans.

Jacob Schnur, (410) 786–7703, for matters related to QHP issuer oversight and direct enrollment.

Allison Yadsko, (410) 786–1740, for matters related to levels of coverage and actuarial value.

Pat Meisol, (410) 786–1917, for matters related to cost-sharing reductions, reconciliation of the cost-sharing reduction portion of advance payments discrepancies, and the premium adjustment percentage.

Kevin Kendrick, (301) 492–4134, for matters related to consumer-operated and oriented plans.

Christina Whitefield, (301) 492–4172, for matters related to the medical loss ratio program.

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Acronyms and Abbreviations

The Act Social Security Act

Affordable Care Act The collective term for the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), as amended

APTC Advance payments of the premium tax credit
AV Actuarial value
CBO Congressional Budget Office
CFR Code of Federal Regulations
CHIP Children's Health Insurance Program
CMP Civil money penalties
CMS Centers for Medicare & Medicaid Services
Code Internal Revenue Code of 1986 (26 U.S.C. 1, *et seq.*)
CO–OPs Consumer Operated and Oriented Plans
CPI Consumer price index
ECP Essential community provider
EDGE External data gathering environment
EHB Essential health benefits
ESRD End Stage Renal Disease
FDA Food and Drug Administration
FFE Federally-facilitated Exchange
FF–SHOP Federally-facilitated Small Business Health Options Program
FPL Federal poverty level
FR Federal Register
FTE Full-time equivalent
HCC Hierarchical condition category
HDHP High deductible health plan
HHS United States Department of Health and Human Services
HIPAA Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191)
HMO Health maintenance organization
IRS Internal Revenue Service
LEP Limited English proficient/proficiency
MLR Medical loss ratio
NAIC National Association of Insurance Commissioners
NDC National Drug Code
NHEA National Health Expenditure Accounts
OCR Office for Civil Rights
OMB Office of Management and Budget
PCIP Pre-Existing Condition Insurance Plan
PHI Protected health information
PHS Act Public Health Service Act
PI Personal income
PII Personally identifiable information
PMPM Per member per month
PPO Preferred provider organization
QHP Qualified health plan
RXC Prescription Drug Categories
SADP Stand-alone dental plan
SBC Summary of benefits and coverage
SBE–FP State-based Exchange on the Federal platform
SHOP Small Business Health Options Program
USP United States Pharmacopeia

I. Executive Summary

The Affordable Care Act enacted a set of reforms that are making high quality health insurance coverage and care more affordable and accessible to millions of Americans. These reforms include the creation of competitive marketplaces called Affordable Insurance Exchanges, or ''Exchanges'' (in this final rule, we also call an Exchange a Health Insurance Marketplace[SM],[1] or Marketplace[SM]), through which qualified individuals and qualified employers can purchase health insurance coverage. In addition, many individuals who enroll in qualified health plans (QHPs) through individual market Exchanges are eligible to claim a premium tax credit to make health insurance premiums more affordable, and reductions in cost-sharing payments to reduce out-of-pocket expenses for health care services. These Affordable Care Act reforms also include the risk adjustment program and rules that are intended to mitigate the potential impact of adverse selection and stabilize the price of health insurance in the individual and small group markets. In previous rulemaking, we have outlined the major provisions and parameters related to many Affordable Care Act programs. In this final rule, to further promote stable premiums in the individual and small group markets, we finalize several updates to the risk adjustment methodology based on our experience with the program to date that are intended to refine the methodology's ability to estimate risk. In particular, beginning for the 2017 benefit year, we finalize an update to better estimate the actuarial risk associated with enrollees who are not enrolled for a full 12 months, and beginning for the 2018 benefit year, we finalize updates to use prescription drug data to update the predictive ability of our risk adjustment models, to establish transfers that will better account for the risk of high-cost enrollees, and to reduce the Statewide average premium in the transfer formula by a portion of administrative costs. We also finalize several amendments to the risk adjustment data validation process, including amendments relating to the review of prescription drug data and the establishment of a discrepancy identification and administrative appeals process.

We finalize several provisions related to cost-sharing parameters. First, we finalize the premium adjustment percentage for 2018, which is used to set the rate of increase for several parameters detailed in the Affordable Care Act, including the maximum annual limitation on cost sharing for 2018. We also finalize the maximum annual limitations on cost sharing for the 2018 benefit year for cost-sharing reduction plan variations. This final rule also finalizes standards for stand-alone dental plans (SADPs) related to the annual limitation on cost sharing.

We are also finalizing a number of amendments that we believe will help promote consumer choice in health plans. These include a requirement that at least one QHP at the silver coverage level and at least one QHP at the gold coverage level must be offered throughout the service area in which a QHP issuer offers coverage through the Exchange; and amendments that would permit a broader de minimis range for the actuarial value of bronze plans to permit greater flexibility in benefit design and to accommodate updates to the 2018 Actuarial Value (AV) Calculator.

We also require QHP issuers on an Exchange to make their QHPs available through the Exchange for a full plan year (unless a basis for suppression applies) as a QHP certification requirement, which would help ensure that individuals enrolling through special enrollment periods and newly qualified employees have access to a range of plans that is generally comparable to the range of plans that can be accessed by those who enroll during an open enrollment period. We also remove a requirement tying participation in the individual market Federally-facilitated Exchanges (FFEs) to participation in the Federally-facilitated Small Business Health Options Programs.

We are finalizing a provision to expand the medical loss ratio (MLR) provision allowing issuers to defer reporting of policies newly issued with a full 12 months of experience (rather than policies newly issued and with less than 12 months of experience) in that MLR reporting year, and to provide the option to limit the total rebate liability payable with respect to a given calendar year to mitigate the impact of the 3-year averaging requirement on new and growing issuers. We finalize several changes to the guaranteed renewability regulations that would address instances where issuers may inadvertently trigger a market withdrawal and 5-year prohibition on market re-entry. We also finalize a change to the age rating rules for children.

In this final rule, we finalize several provisions regarding when and how consumers may choose and enroll in plans. This rule includes provisions relating to: Codifying several special enrollment periods that are already available to consumers in order to ensure the rules are clear and to limit potential abuse; the enrollment processes in the Small Business Health Options Programs (SHOPs); and binder payment deadlines. We also finalize several amendments related to insurance affordability programs, including regarding eligibility determinations, and periodic data matching.

[1] Health Insurance Marketplace[SM] and Marketplace[SM] are service marks of the U.S. Department of Health & Human Services.

We are finalizing a number of amendments to assist consumers in selecting and enrolling in QHPs and insurance affordability programs. In the HHS Notice of Benefit and Payment Parameters for 2017 Final Rule (2017 Payment Notice), we established standardized options, which we will display on *HealthCare.gov* in a manner that distinguishes them from other QHPs, and a categorization of network breadth. We believe both policies will make it easier for consumers to select health plans through *HealthCare.gov*. For standardized options, we are finalizing the selection of three bronze standardized options (in addition to one high deductible health plan (HDHP), within the meaning of section 223(c)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 1, *et seq.*) (the Code), at the bronze level of coverage), and three standardized options at each of the silver, silver cost-sharing reduction variations, and gold metal levels. We have identified one standardized option at each metal level and one at each cost-sharing reduction plan variation level for use in each State. By increasing the scope of potential standardized designs, we will better accommodate State cost-sharing laws. We are finalizing a provision to make differential display of standardized options available in State-based Exchanges on the Federal platform (SBE–FPs) at the State's option, as well as to require differential display of standardized options by QHP issuers and Web-brokers [2] using a direct enrollment pathway to facilitate enrollment through a FFE or SBE–FP. Additionally, we are finalizing a number of standards and consumer protections that would apply to a Web-broker or issuer using the direct enrollment pathway. We are augmenting our network adequacy network breadth display policy to account for QHPs that are part of an integrated delivery system. We are also finalizing standards relating to the essential community provider (ECP) requirements and amending the standards regarding providing taglines in non-English languages indicating the availability of language services.

We also finalize several amendments that would strengthen Exchanges' oversight capabilities. These include provisions requiring issuers seeking to rescind coverage purchased through the Exchange to show that the rescission is appropriate and making explicit HHS's authority to impose civil money penalties (CMPs) in situations where QHP issuers are non-responsive or uncooperative with compliance reviews. We also finalize an avenue through which issuers can appeal a non-certification or decertification.

Finally, in this final rule, we make minor adjustments to our rules governing the single risk pool, SHOP, user fees, notices, decertification, and appeals.

This final rule also finalizes the ''Patient Protection and Affordable Care Act; Amendments to Special Enrollment Periods and the Consumer Operated and Oriented Plan Program'' interim final rule with comment published in the May 11, 2016 **Federal Register** (81 FR 29146). In this final rule, we finalize a number of amendments to special enrollment periods for individuals who gain access to new QHPs as a result of a permanent move so that this special enrollment period is generally available only to those individuals who had minimum essential coverage prior to their permanent move. We are also finalizing amendments to the CO–OP governance requirements to provide greater flexibility and facilitate private market transactions that can provide access to needed capital.

II. HHS Notice of Benefit and Payment Parameters for 2018

A. Background

1. Legislative and Regulatory Overview

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this final rule, we refer to the two statutes collectively as the ''Affordable Care Act.''

The Affordable Care Act reorganizes, amends, and adds to the provisions of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets.

Section 2701 of the PHS Act, as added by the Affordable Care Act, restricts the variation in premium rates charged by a health insurance issuer for non-grandfathered health insurance coverage in the individual or small group market to certain specified factors. The factors are: Family size, geographic area, age, and tobacco use.

Section 2701 of the PHS Act operates in coordination with section 1312(c) of the Affordable Care Act. Section 1312(c) of the Affordable Care Act generally requires a health insurance issuer to consider all enrollees in all health plans (except grandfathered health plans) offered by such issuer to be members of a single risk pool for each of its individual and small group markets. States have the option to merge the individual and small group market risk pools under section 1312(c)(3) of the Affordable Care Act.

Section 2702 of the PHS Act, as added by the Affordable Care Act, requires health insurance issuers that offer health insurance coverage in the group or individual market in a State to offer coverage to and accept every employer and individual in the State that applies for such coverage, unless an exception applies.[3]

Section 2703 of the PHS Act, as added by the Affordable Care Act, and former section 2712 and section 2742 of the PHS Act, as added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), require health insurance issuers that offer health insurance coverage in the group or individual market to renew or continue in force such coverage at the option of the plan sponsor or individual, unless an exception applies.

Section 2718 of the PHS Act, as added by the Affordable Care Act, generally requires health insurance issuers to submit an annual medical loss ratio report to HHS, and provide rebates to enrollees if the issuers do not achieve specified MLR thresholds.

Section 2794 of the PHS Act, as added by the Affordable Care Act, directs the Secretary of HHS (the Secretary), in conjunction with the States, to establish a process for the annual review of unreasonable increases in premiums for health insurance coverage.[4] The law also requires health insurance issuers to submit to the Secretary and the applicable State justifications for unreasonable premium increases prior to the implementation of the increases. Section 2794(b)(2) of the PHS Act further directs the Secretary, in conjunction with the States, to monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange beginning with plan years starting in 2014.

Section 1101 of the Affordable Care Act required the Secretary to establish a

[2] CMS uses the term ''Web-broker'' to describe an individual agent or broker, group of agents and brokers, or company registered with the FFEs that provides a non-Exchange Web site to assist consumers in the selection and enrollment in qualified health plans (QHPs) offered through the Exchanges as described in 45 CFR 155.220(c)(3).

[3] Before enactment of the Affordable Care Act, the Health Insurance Portability and Accountability Act of 1996 amended the PHS Act (formerly section 2711) to generally require guaranteed availability of coverage for employers in the small group market.

[4] The implementing regulations in part 154 limit the scope of the requirements under section 2794 of the PHS Act to health insurance issuers offering health insurance coverage in the individual market or small group market.

temporary high-risk health insurance pool program to provide health insurance coverage from the establishment of the program until January 1, 2014 for eligible individuals, namely U.S. residents who are U.S. citizens or lawfully present in the U.S.; did not have other health insurance coverage in the 6 months preceding enactment; and have a pre-existing condition. Section 1101 also requires that the Secretary develop procedures to provide for the transition of eligible individuals enrolled in this health insurance coverage into qualified health plans offered through an Exchange to avoid a lapse in coverage.

Section 1302 of the Affordable Care Act provides for the establishment of an essential health benefits (EHB) package that includes coverage of EHB (as defined by the Secretary), cost-sharing limits, and Actuarial Value (AV) requirements. The law directs that EHBs be equal in scope to the benefits covered by a typical employer plan and that they cover at least the following 10 general categories: Ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care.

Section 1301(a)(1)(B) of the Affordable Care Act directs all issuers of QHPs to cover the EHB package described in section 1302(a) of the Affordable Care Act, including coverage of the services described in section 1302(b) of the Affordable Care Act, to adhere to the cost-sharing limits described in section 1302(c) of the Affordable Care Act and to meet the AV levels established in section 1302(d) of the Affordable Care Act. Section 2707(a) of the PHS Act, which is effective for plan or policy years beginning on or after January 1, 2014, extends the coverage of the EHB package to non-grandfathered individual and small group market coverage, irrespective of whether such coverage is offered through an Exchange. In addition, section 2707(b) of the PHS Act directs non-grandfathered group health plans to ensure that cost sharing under the plan does not exceed the limitations described in section 1302(c)(1) of the Affordable Care Act.

Section 1302(d) of the Affordable Care Act describes the various levels of coverage based on AV. Consistent with section 1302(d)(2)(A) of the Affordable Care Act, AV is calculated based on the provision of EHB to a standard population. Section 1302(d)(3) of the Affordable Care Act directs the Secretary to develop guidelines that allow for de minimis variation in AV calculations.

Section 1311(b)(1)(B) of the Affordable Care Act directs that the Small Business Health Options Program assist qualified small employers in facilitating the enrollment of their employees in qualified health plans offered in the small group market. Sections 1312(f)(1) and (2) of the Affordable Care Act define qualified individuals and qualified employers. Under section 1312(f)(2)(B) of the Affordable Care Act, beginning in 2017, States will have the option to allow issuers to offer QHPs in the large group market through an Exchange.[5]

Section 1311(c)(1)(B) of the Affordable Care Act requires the Secretary to establish minimum criteria for provider network adequacy that a health plan must meet to be certified as a QHP.

Section 1311(c)(5) of the Affordable Care Act requires the Secretary to continue to operate, maintain, and update the Internet portal developed under section 1103 of the Affordable Care Act to provide information to consumers and small businesses on affordable health insurance coverage options.

Section 1311(c)(6)(C) of the Affordable Care Act states that the Secretary is to provide for special enrollment periods specified in section 9801 of the Code and other special enrollment periods under circumstances similar to such periods under part D of title XVIII of the Social Security Act (the Act).

Section 1312(e) of the Affordable Care Act directs the Secretary to establish procedures under which a State may permit agents and brokers to enroll qualified individuals and qualified employers in QHPs through an Exchange, and to assist individuals in applying for financial assistance for QHPs sold through an Exchange.

Section 1321(a) of the Affordable Care Act provides broad authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges, QHPs and other components of title I of the Affordable Care Act. Section 1321(a)(1) directs the Secretary to issue regulations that set standards for meeting the requirements of title I of the Affordable Care Act with respect to, among other things, the establishment and operation of Exchanges.

Sections 1313 and 1321 of the Affordable Care Act provide the Secretary with the authority to oversee the financial integrity of State Exchanges, their compliance with HHS standards, and the efficient and non-discriminatory administration of State Exchange activities. Section 1321 of the Affordable Care Act provides for State flexibility in the operation and enforcement of Exchanges and related requirements.

When operating a Federally-facilitated Exchange (FFE) under section 1321(c)(1) of the Affordable Care Act, HHS has the authority under sections 1321(c)(1) and 1311(d)(5)(A) of the Affordable Care Act to collect and spend user fees. In addition, 31 U.S.C. 9701 permits a Federal agency to establish a charge for a service provided by the agency. These user fees are appropriated to CMS in the CMS Program Management appropriation.

Section 1321(c)(2) of the Affordable Care Act authorizes the Secretary to enforce the Exchange standards using civil money penalties (CMPs) on the same basis as detailed in section 2723(b) of the PHS Act. Section 2723(b) of the PHS Act authorizes the Secretary to impose CMPs as a means of enforcing the individual and group market reforms contained in part A of title XXVII of the PHS Act with respect to health insurance issuers when a State fails to substantially enforce these provisions.

Section 1321(d) of the Affordable Care Act provides that nothing in title I of the Affordable Care Act should be construed to preempt any State law that does not prevent the application of title I of the Affordable Care Act. Section 1311(k) of the Affordable Care Act specifies that Exchanges may not establish rules that conflict with or prevent the application of regulations issued by the Secretary.

Section 1343 of the Affordable Care Act establishes a risk adjustment program in which States, or HHS on behalf of States, collect charges from health insurance issuers that attract lower-risk populations in order to use those funds to provide payments to health insurance issuers that attract higher-risk populations, such as those with chronic conditions, thereby reducing incentives for issuers to avoid higher-risk enrollees.

Sections 1402 and 1412 of the Affordable Care Act provide for, among other things, reductions in cost sharing for EHB for qualified low- and

[5] If a State elects this option, the rating rules in section 2701 of the PHS Act and its implementing regulations at 45 CFR 147.102 will apply to all coverage offered in such State's large group market under section 2701(a)(5) of the PHS Act.

moderate-income enrollees in silver level health plans offered through the individual market Exchanges. These sections also provide for reductions in cost sharing for Indians enrolled in QHPs at any metal level.

a. Premium Stabilization Programs

In the July 15, 2011 **Federal Register** (76 FR 41929), we published a proposed rule outlining the framework for the premium stabilization programs. We implemented the premium stabilization programs in a final rule, published in the March 23, 2012 **Federal Register** (77 FR 17219) (Premium Stabilization Rule). In the December 7, 2012 **Federal Register** (77 FR 73117), we published a proposed rule outlining the benefit and payment parameters for the 2014 benefit year to expand the provisions related to the premium stabilization programs and set forth payment parameters in those programs (proposed 2014 Payment Notice). We published the 2014 Payment Notice final rule in the March 11, 2013 **Federal Register** (78 FR 15409) (2014 Payment Notice).

In the December 2, 2013 **Federal Register** (78 FR 72321), we published a proposed rule outlining the benefit and payment parameters for the 2015 benefit year to expand the provisions related to the premium stabilization programs, setting forth certain oversight provisions and establishing the payment parameters in those programs (proposed 2015 Payment Notice). We published the 2015 Payment Notice final rule in the March 11, 2014 **Federal Register** (79 FR 13743) (2015 Payment Notice).

In the November 26, 2014 **Federal Register** (79 FR 70673), we published a proposed rule outlining the benefit and payment parameters for the 2016 benefit year to expand the provisions related to the premium stabilization programs, setting forth certain oversight provisions and establishing the payment parameters in those programs (proposed 2016 Payment Notice). We published the 2016 Payment Notice final rule in the February 27, 2015 **Federal Register** (80 FR 10749) (2016 Payment Notice).

In the December 2, 2015 **Federal Register** (80 FR 75487), we published a proposed rule outlining the benefit and payment parameters for the 2017 benefit year to expand the provisions related to the premium stabilization programs, setting forth certain oversight provisions and establishing the payment parameters in those programs (proposed 2017 Payment Notice). We published the 2017 Payment Notice final rule in the March 8, 2016 **Federal Register** (81 FR 12203) (2017 Payment Notice).

b. Program Integrity

In the June 19, 2013 **Federal Register** (78 FR 37031), we published a proposed rule that proposed certain program integrity standards related to Exchanges and the premium stabilization programs (proposed Program Integrity Rule). The provisions of that proposed rule were finalized in two rules, the ''first Program Integrity Rule'' published in the August 30, 2013 **Federal Register** (78 FR 54069) and the ''second Program Integrity Rule'' published in the October 30, 2013 **Federal Register** (78 FR 65045).

c. Exchanges

We published a request for comment relating to Exchanges in the August 3, 2010 **Federal Register** (75 FR 45584). We issued initial guidance to States on Exchanges on November 18, 2010. We proposed a rule in the July 15, 2011 **Federal Register** (76 FR 41865) to implement components of the Exchanges, and a rule in the August 17, 2011 **Federal Register** (76 FR 51201) regarding Exchange functions in the individual market, eligibility determinations, and Exchange standards for employers. A final rule implementing components of the Exchanges and setting forth standards for eligibility for Exchanges was published in the March 27, 2012 **Federal Register** (77 FR 18309) (Exchange Establishment Rule).

We established standards for SHOP in the 2014 Payment Notice (78 FR 15409) and in a proposed rule published in the March 11, 2013 **Federal Register** (78 FR 15553) and finalized in the June 4, 2013 **Federal Register** (78 FR 33233). We also set forth standards related to Exchange user fees in the 2014 Payment Notice.

In the 2017 Payment Notice we established additional Exchange standards, including requirements for State Exchanges using the Federal platform and standardized options.

In an interim final rule with comment published in the May 11, 2016 **Federal Register** (81 FR 29146) we amended the parameters of certain special enrollment periods.

d. Essential Health Benefits and Actuarial Value

On December 16, 2011, HHS released a bulletin [6] (the EHB Bulletin) that outlined an intended regulatory approach for defining EHB, including a benchmark-based framework. HHS also published a bulletin that outlined its intended regulatory approach to calculations of AV on February 24, 2012.[7] A proposed rule relating to EHBs and AVs was published in the November 26, 2012 **Federal Register** (77 FR 70643). We established requirements relating to EHBs and AVs in the Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation Final Rule, which was published in the February 25, 2013 **Federal Register** (78 FR 12833) (EHB Rule).

e. Market Rules

A proposed rule relating to the 2014 health insurance market rules was published in the November 26, 2012 **Federal Register** (77 FR 70584). A final rule implementing the health insurance market rules was published in the February 27, 2013 **Federal Register** (78 FR 13406) (2014 Market Rules).

A proposed rule relating to Exchanges and Insurance Market Standards for 2015 and Beyond was published in the March 21, 2014 **Federal Register** (79 FR 15808) (2015 Market Standards Proposed Rule). A final rule implementing the Exchange and Insurance Market Standards for 2015 and Beyond was published in the May 27, 2014 **Federal Register** (79 FR 30240) (2015 Market Standards Rule).

f. Rate Review

A proposed rule to establish the rate review program was published in the December 23, 2010 **Federal Register** (75 FR 81003). A final rule with comment period implementing the rate review program was published in the May 23, 2011 **Federal Register** (76 FR 29963) (Rate Review Rule). The provisions of the Rate Review Rule were amended in final rules published in the September 6, 2011 **Federal Register** (76 FR 54969), the February 27, 2013 **Federal Register** (78 FR 13405), the May 27, 2014 **Federal Register** (79 FR 30339), and the February 27, 2015 **Federal Register** (80 FR 10749).

g. Medical Loss Ratio

We published a request for comment on section 2718 of the PHS Act in the April 14, 2010 **Federal Register** (75 FR 19297), and published an interim final rule relating to the MLR program on December 1, 2010 (75 FR 74863). A final rule was published in the December 7, 2011 **Federal Register** (76 FR 76573). An interim final rule was published in the December 7, 2011 **Federal Register** (76 FR 76595). A final rule was published in the **Federal Register** on

[6] Essential Health Benefits Bulletin. Dec. 16, 2011. Available at *https://www.cms.gov/CCIIO/Resources/Files/Downloads/essential_health_benefits_bulletin.pdf.*

[7] Actuarial Value and Cost-Sharing Reductions Bulletin. Feb. 24, 2012. Available at *https://www.cms.gov/CCIIO/Resources/Files/Downloads/Av-csr-bulletin.pdf.*

May 16, 2012 (77 FR 28790). The Medical Loss Ratio (MLR) program requirements were amended in final rules published in the March 11, 2014 **Federal Register** (79 FR 13743), the May 27, 2014 **Federal Register** (79 FR 30339), the February 27, 2015 **Federal Register** (80 FR 10749), and the March 8, 2016 **Federal Register** (81 FR 12203).

h. Pre-Existing Condition Insurance Plan Program

We published an interim final rule in the July 30, 2010 **Federal Register** (75 FR 45013) setting forth implementing regulations for the Pre-Existing Condition Insurance Plan Program. An amendment to this interim final rule was published in the August 30, 2012 **Federal Register** (77 FR 52614). We published an interim final rule in the May 22, 2013 **Federal Register** (78 FR 30218).

2. Stakeholder Consultation and Input

HHS has consulted with stakeholders on policies related to the operation of Exchanges, including the SHOPs, and the premium stabilization programs. We have held a number of listening sessions with consumers, providers, employers, health plans, the actuarial community, and State representatives to gather public input. We consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners (NAIC), regular contact with States, and meetings with Tribal leaders and representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties.

On March 31, 2016, we hosted a public conference to discuss the potential improvements to the Federally certified HHS-operated risk adjustment methodology. Prior to the conference, we published the ''March 31, 2016, HHS-Operated Risk Adjustment Methodology Meeting: Discussion Paper'' (''White Paper''),[8] on which we received public comment. These comments are available at *https://www.regtap.info/uploads/library/RA_Onsite_Discussion_Paper_Comments_5CR_080916.pdf.*

We considered all public input we received as we developed the policies in this final rule.

3. Structure of Final Rule

The regulations outlined in this final rule will be codified in 45 CFR parts 144, 146, 147, 148, 153, 154, 155, 156, 157 and 158.

The regulations in parts 144 and 154 make conforming revisions to the regulatory definitions of ''plan'' and ''product'' with respect to the transfer of coverage to a related issuer within the same controlled group.

The regulations in parts 146, 147 and 148 address two scenarios in which the discontinuation of all coverage currently offered by an issuer within a market and State will not be treated as a market withdrawal for purposes of the guaranteed renewability requirements. The regulations in part 147 create multiple child age bands for rating purposes, and amend the provision regarding limited open enrollment periods (also known as special enrollment periods) in the individual market to provide greater clarity and to reflect the amendments regarding special enrollment periods in the Exchanges.

Discussion in part 152 responds to comments on potential approaches to ensure the successful transition of former Pre-Existing Condition Insurance Plan (PCIP) Program enrollees to the Exchange without a lapse in coverage, under the PCIP statute.

The regulations in part 153 include the risk adjustment user fee for 2018 and outline a number of modifications to the HHS risk adjustment methodology, including modifications to: (1) Address partial year enrollment; (2) use prescription drug data to predict actuarial risk; and (3) alter the methodology to better account for high-cost enrollees. We also provide for the use of External data gathering environment (EDGE) server data to recalibrate the risk adjustment models.

The regulations in part 155 include several amendments regarding standardized options, including the 2018 cost-sharing structures for standardized options. Other requirements in part 155 are related to the eligibility and verification processes for insurance affordability programs. We amend rules related to enrollment of qualified individuals into QHPs and make various amendments related to the SHOPs. We amend the regulations requiring Exchanges, QHP issuers, and Web-brokers to provide taglines in non-English languages. We also amend existing requirements, as well as establish new ones, for agents and brokers that use the current direct enrollment process to strengthen the consumer protections when a Web-broker is facilitating enrollment through an FFE or SBE–FP. We finalize the required contribution percentage for 2018. We finalize a new policy regarding appealing denials of QHP certification. We also amend the standards applicable in State Exchanges using the Federal platform for SHOP functions in parts 155 and 156. We also amend the regulations applicable to qualified employers in the SHOPs in part 157.

The regulations in part 156 include amendments related to cost-sharing parameters, including the premium adjustment percentage, the maximum annual limitation on cost sharing, and the reductions in the maximum annual limitation for cost-sharing plan variations for 2018. We also finalize the user fee rate applicable in the FFEs and SBE–FPs. We also finalize changes regarding AV, levels of coverage, and ECP requirements, and provide for calibration of the single risk pool index rate. Additionally, we amend the regulation requiring issuers to adhere to the SHOP participation provision.

The amendments to the regulations in part 158 revise the provisions related to deferral of reporting of experience for newer business, as well as add provisions related to limiting the total rebate liability payable with respect to a given calendar year.

B. Provisions of the Final Regulations and Analyses and Responses to Public Comments

In the September 6, 2016 **Federal Register** (81 FR 61456), we published the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2018 proposed rule (proposed 2018 Payment Notice). We received 662 comments, including 456 substantially similar letters regarding our cost-sharing proposal related to speech therapy services for the proposed 2018 standardized options. Comments were received from the National Association of Insurance Commissioners, State departments of insurance, State Exchanges, health insurance issuers, providers, consumer groups, labor entities, industry groups, patient safety groups, national interest groups, and other stakeholders. The comments ranged from general support of or opposition to the proposed provisions to specific questions or comments regarding proposed changes. We received a number of comments and suggestions that were outside the scope of the proposed rule that will not be addressed in this final rule.

In this final rule, we provide a summary of each proposed provision, a summary of those public comments received that directly related to the proposals, our responses to them, and a description of the provisions we are finalizing.

[8] March 31, 2016, HHS-Operated Risk Adjustment Methodology Meeting: Discussion Paper. March 24, 2016. Available at *https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/RA-March-31-White-Paper-032416.pdf.*

Comment: We received comments stating that the comment period was unreasonably short, making it difficult for stakeholders to provide in-depth analysis and input. Commenters suggested that HHS provide a comment period of 60 days from the date of publication in the **Federal Register** for this and future HHS Notices of Benefit and Payment Parameters.

Response: We published the proposed 2018 Payment Notice earlier this year in order to better assist issuers in planning for the upcoming benefit year. In previous years, we received issuer feedback requesting that the rule be released and finalized earlier in order to facilitate their actuarial work estimating rates and developing benefit packages. We continue to try to expand the comment period while also providing industry stakeholders with more time to implement the final rule.

Comment: We received a number of comments requesting that HHS propose further rules around essential health benefits (EHB) and network adequacy. Commenters encouraged HHS to strengthen Federal oversight of the EHB plans' compliance with nondiscrimination requirements. Some commenters emphasized the importance of ensuring coverage is affordable to consumers.

Response: We recognize the importance of patient protections and non-discrimination in benefit design. As stated in § 156.125(a), an issuer does not provide EHB if its benefit design, or the implementation of its benefit design, discriminates based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions. Furthermore, as stated in § 156.125(b), an issuer providing EHB must also comply with § 156.200(e), which prohibits discrimination on the basis of race, color, national origin, disability, age, sex, gender identity, and sexual orientation. As in previous years, HHS will continue to outline its review of health plans applying to be qualified health plans (QHPs) or stand-alone dental plan (SADPs) in the FFEs for compliance with nondiscrimination standards in the Letter to Issuers in the Federally-facilitated Marketplaces. Because nondiscrimination provisions applicable to plans required to offer EHB also are related to many requirements under the joint interpretive jurisdiction of HHS and the Departments of Labor and the Treasury, HHS will consult with relevant Federal agencies, such as the Departments of Labor and the Treasury, as necessary in developing new guidance related to discriminatory benefit designs. As noted previously, we remind issuers that certain other Federal civil rights laws also impose nondiscrimination requirements. We will consider the comments we have received with respect to network adequacy as we monitor the work of States and the National Association of Insurance Commissioners (NAIC) in this area. Finally, we appreciate the comments regarding affordability of coverage, and agree that affordability is critical to the success of the Exchanges.

1. Part 144—Requirements Relating to Health Insurance Coverage

a. Definitions (§ 144.103)

In the proposed rule, consistent with our proposal regarding the transfer of products within a group of related issuers, we proposed to revise the definitions of ''plan'' and ''product'' in 45 CFR 144.103 by removing language that would restrict a plan or product from being considered the same plan or product when it is no longer offered by the same issuer, but is still offered by a different issuer in the same controlled group.

We also proposed that, in the case of a product that has been modified, transferred, or replaced, the product will be considered to be the ''same product'' when it meets the standards for uniform modification of coverage at §§ 146.152(f), 147.106(e), or 148.122(g), as applicable. For clarity, we also proposed to include in the definition of ''product'' examples of product network types including health maintenance organization (HMO), preferred provider organization (PPO), exclusive provider organization, point of service, and indemnity.

We are finalizing these provisions as proposed, with minor non-substantive modifications to the definition of ''product'' for clarity.

Comment: One commenter requested that HHS clarify whether claims reporting for risk adjustment or medical loss ratio (MLR) would change based on these different definitions.

Response: This change will not alter the claims reporting process for risk adjustment or MLR. We note that when business subject to MLR is transferred between related issuers within the same controlled group, the acquiring issuer must include the ceding issuer's prior year experience in calculating the 3-year average MLR. We also note that if an issuer of a QHP, a plan otherwise subject to risk corridors, a risk adjustment covered plan, or a reinsurance-eligible plan experiences a change of ownership, as recognized by the State in which the plan is offered, the issuer must notify HHS in accordance with 45 CFR 147.106(g).

Comment: Some commenters requested that HHS expand the definitions, so that any transaction that results in a product with the same provider network and same benefit structure as the prior product would be considered to be the same product regardless of whether the acquiring issuer is part of the same controlled group as the ceding issuer.

Response: We are not expanding the proposed definitions at this time. As discussed in the preamble to § 147.106, below, in the case of a transaction that results in a product being offered by a different issuer, the resulting new product will be considered the same as the prior product only if the acquiring issuer is part of the same controlled group as the ceding issuer and any changes to the product are within the scope of a uniform modification of coverage.

Comment: We have been requested by stakeholders to clarify whether a visit limit is considered a ''benefit'' in the definition of product or a ''cost-sharing structure'' in the definition of plan under § 144.103.

Response: At § 155.20, we defined ''cost sharing'' based on the definition in section 1302(c) of the Affordable Care Act, which applies to title I of the Affordable Care Act, to mean any expenditure required by or on behalf of an enrollee with respect to essential health benefits; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for non-network providers, and spending for non-covered services. For purposes of consistency, we interpret ''cost-sharing structure'' in the definition of ''plan'' under § 144.103 as being based on the same concept of ''cost sharing.'' This definition does not include limits on benefits based on the frequency of treatment, number of visits, days of coverage, or other similar limits on the amount, scope or duration of treatment. We interpret such types of limitations, which specify the scope of benefits covered rather than the portion of the payment made to the health care provider owed by the consumer, to be features of a product's ''discrete package of health insurance coverage benefits.'' Accordingly, each plan within a product must have the same visit or other frequency limits (if any) on the same covered benefits.

2. Part 146—Requirements for the Group Health Insurance Market

a. Guaranteed Renewability of Coverage for Employers in the Group Market (§ 146.152)

For a discussion of the provisions of this final rule related to part 146, please see the preamble to § 147.106.

3. Part 147—Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets

a. Fair Health Insurance Premiums (§ 147.102)

In the proposed rule, we proposed to replace the age band for individuals age 0 through 20 with multiple child age bands to better reflect the actuarial risk of children and to provide a more gradual transition from child to adult age rating. We specifically proposed one age band for individuals age 0 through 14, and then single-year age bands for individuals age 15 through 20, effective for plan years or policy years beginning on or after January 1, 2018. We proposed age rating factors for the default Federal standard child curve to correspond to the proposed child age bands. We sought comments on this proposal and whether the age factors should be implemented at one time or phased in over a 3-year period.

We are finalizing this proposal with a modification to specify that the new child age bands will apply for plan years or policy years beginning on or after January 1, 2018; until that time the single age band for children will continue to apply.

Comment: Some commenters requested that HHS establish multiple age bands between ages 0 and 14.

Response: We proposed one age band for ages 0 through 14 because, in general, claims costs are highest for children age 0 through 4 and then lower for children age 4 through 14. Having one age band for individuals age 0 through 14 spreads the cost of newborns, avoiding significant premium increases for families with young children.

Comment: Some commenters recommended that there be a child rating factor added to recognize when a plan includes embedded pediatric dental coverage.

Response: Under the single risk pool provision at § 156.80, claims costs for providing EHB—including the pediatric dental EHB—are incorporated into the marketwide index rate and spread across all of an issuer's plans in the single risk pool, regardless of whether any particular plan includes the pediatric dental EHB. Because these costs are reflected in the plan-adjusted index rate for each plan, it would not be appropriate to further vary premium rates at the consumer level based on whether a plan includes the pediatric dental EHB.

Comment: Although some commenters recommended phasing in the child age rating factors, the majority of commenters expressed a preference for a one-time implementation of the change to minimize market disruption.

Response: We are finalizing the proposed changes to the default Federal standard child age curve as proposed. In guidance being released with this final rule, we provide a complete, updated version of the default Federal standard age curve, and provide guidance for States on reporting State-specific rating requirements to HHS in accordance with §§ 147.103 and 156.80(c). We note that States may, but are not required to, modify existing State-specific age curves as a result of this final rule; State-specific age curves that utilize the same factor for ages 0 through 20 are not inconsistent with the multiple child age bands established by this final rule. We are also adding regulation text to reflect that the changes to the age curve and rating factors will occur all at once, and will be effective for the 2018 plan year.[9]

b. Guaranteed Availability of Coverage (§ 147.104)

(1) Limited Open Enrollment Periods

For a discussion of the provisions of this final rule related to limited open enrollment periods (also known as special enrollment periods) in § 147.104, please see the preamble to § 155.420 in sections II.B and III.B of this final rule.

(2) Network Sharing Arrangements Between Affiliated Issuers

Under section 2702 of the PHS Act, as added by the Affordable Care Act, a health insurance issuer that offers health insurance coverage in the group market generally must accept every employer in the State that applies for such coverage, but may limit its offer of coverage to employers in the small group and large group market that have eligible individuals who live, work, or reside in the service area of the issuer's network plan. In the proposed rule (81 FR at 61462 through 61463), we explained that Federal law does not require that the employer itself have a place of business within the issuer's service area to be entitled to guaranteed availability for its employees.[10]

Some affiliated issuers have contractual arrangements that do not allow them to offer coverage to an employer whose business headquarters is outside their service area, but will allow the employer's employees who live, work, or reside in the service area of an affiliate issuer to access in-network coverage under the employer's plan through network sharing arrangements between the affiliated issuers. For example, affiliated issuers A and B have service areas A and B, respectively. Under the terms of the agreements, an employer with business headquarters in service area A could purchase coverage from issuer A to cover its employees in both service areas A and B using the provider networks of both issuer A and B, but that employer could not purchase coverage from issuer B. These issuers believe that issuer B satisfies the guaranteed availability requirements because the employer can purchase coverage from issuer A, and its employees in service area B can have access to the coverage under the plan issued by issuer A using issuer B's provider network. We sought comment on whether or how these arrangements could be structured, consistent with State licensure requirements, to satisfy guaranteed availability requirements.

Comment: Several commenters expressed support for the use of network sharing arrangements, though they did not explain how the restrictions on the sale of coverage were consistent with the requirements of section 2702 of the PHS Act. Other commenters were concerned about allowing issuers to deny coverage under these arrangements, suggesting it would create an uneven playing field for non-affiliated issuers, reduce employers' and employees' coverage options, and violate the guaranteed availability requirements.

Response: We agree with commenters who suggested that there is no exception to the guaranteed availability requirements for issuers who are members of a group of affiliated issuers. Under the statute, ''each'' issuer must guarantee availability of all of its products that are approved for sale in the market in the State, and the statute does not allow an issuer to satisfy its

[9] CMS Insurance Standards Bulletin: Guidance Regarding Age Curves and State Reporting. Dec. 16, 2016. Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/index.html#*Health Insurance Market Reforms.

[10] Nothing in section 2702 of the PHS Act requires an issuer to offer coverage to an employer where the situs of the contract is outside the State in which the issuer is licensed to engage in the business of insurance, or requires an issuer to offer coverage to an employer if doing so would exceed the scope of that issuer's license from the applicable State authority.

obligations by ensuring that a plan is available from one or more separately licensed issuers. While issuers, therefore, may not deny an application for coverage of an employer with eligible employees who live, work, or reside within the issuer's service area absent an applicable exception, we note that nothing in section 2702 of the PHS Act prohibits an issuer from entering into a network sharing arrangement or from referring employers that apply for coverage to an affiliate issuer, and we agree with commenters that network sharing arrangements can be an attractive coverage arrangement for many employers.

We recognize that issuers with these types of arrangements may need time to modify their contractual agreements, and that this process may not be completed when issuers will be completing their plan designs in early 2017 for plan years beginning in 2018. Accordingly, HHS will not take enforcement action for plan years beginning before January 1, 2019, with respect to an issuer with a contractual arrangement in effect as of the publication date of this final rule that prevents it from offering coverage to an employer that is located outside the issuer's service area as required under section 2702 of the PHS Act, if the following conditions are met: (1) An affiliate issuer makes coverage available to the employer on a guaranteed availability basis, and (2) the employer's employees can access in-network coverage under the same plan through the affiliated issuers' provider networks. States, as primary enforcers of the guaranteed availability requirements, may exercise similar enforcement discretion, and will not be considered by HHS to be failing to substantially enforce the guaranteed availability provision for this reason.

c. Guaranteed Renewability of Coverage (§ 147.106)

(1) Market Withdrawal Exception to Guaranteed Renewability Requirements

Section 147.106(d)(2) provides that a health insurance issuer that elects to discontinue all health insurance coverage in the individual, small group, or large group market in a State is prohibited from re-entering the applicable market for at least 5 years. The following amendments will become effective with the effective date of this final rule.

i. Transfer of Products to a Related Issuer

To align with State approaches to corporate structuring or other transactions within a controlled group of issuers, and to avoid unintended market bans where continuity of coverage is effectively provided, we proposed to add new § 147.106(d)(3) to provide that an issuer has not discontinued offering all health insurance coverage in a market if the issuer or a member of the issuer's controlled group continues to offer and make available for enrollment at least one product of the original issuer that is considered to be the same product (as amended in § 144.103 of this final rule), meaning that any change to the product is within the scope of a uniform modification of coverage under § 147.106(e). We also proposed to amend § 147.106(e)(3)(i) to provide that, for purposes of guaranteed renewability, a product will be considered to be the same product when offered by a different issuer within an issuer's controlled group, provided it otherwise meets the standards for uniform modification of coverage.[11] We are finalizing the amendments to § 147.106(d)(3), (d)(3)(i), and (e)(3)(i) and finalizing conforming amendments at §§ 146.152(d)(3), (d)(3)(i), and (f)(3)(i) and 148.122(e)(4), (e)(4)(i) and (g)(3)(i), with non-substantive clarifying modifications to the text of the regulation, including the addition of §§ 146.152(d)(4), 147.106(d)(4), and § 148.122(e)(5).

For purposes of guaranteed renewability, we proposed to use a definition based on the Code definition of controlled group that applies for purposes of determining whether a group of two or more persons is treated as a single covered entity under the health insurance providers fee under section 9010 of the Affordable Care Act and 26 CFR 57.2(c). Specifically, for purposes of guaranteed renewability, we proposed that ''controlled group'' means a group of two or more persons that is treated as a single employer under sections 52(a), 52(b), 414(m), or 414(o) of the Code. We proposed that definition for consistency with other Affordable Care Act provisions, including sections 9008 and 9010, which pertain to the branded prescription drug fee and health insurance provider's fee, respectively, and are familiar to health insurance issuers. We also noted that the definition of issuer group under § 156.20 is familiar to issuers and sought comment on whether to use a similar definition or another definition for purposes of these regulations. We are finalizing the definition of ''controlled group'' as proposed, including by explicitly providing additional flexibility for States as described below for purposes of guaranteed renewability (as discussed in the proposed rule).

As we discussed in the proposed rule, issuers transferring products to another issuer in their controlled group that otherwise remain within the scope of a uniform modification are not required to send discontinuation notices under paragraph (c)(1) or (d)(1), as applicable. However, the issuer of the coverage (whether the current issuer or the acquiring issuer) must provide a renewal notice under §§ 146.152(h), 147.106(f) or 148.122(i), as applicable, at the time the renewal notice is otherwise required to be provided.

We also proposed that States that interpret or apply market withdrawal provisions differently under State law would not be prohibited from considering products transferred to a different issuer within a controlled group to be a new product and the scenario a market withdrawal. We are finalizing this proposal with a modification to specify that a controlled group may be defined more narrowly under State law—that is, a controlled group may be defined to not include all of the entities that would be included under the definition established in this final rule.

Because the products would be considered under these regulations the same products for purposes of continuity of coverage for the enrollees, we also proposed that the products be considered the same products for purposes of the Federal rate review requirements, to the extent applicable, and therefore we proposed conforming amendments as described in the preamble to § 154.102. For further discussion of the amendment to § 154.102, see that section of the preamble in this rule.

Comment: One commenter noted that each State has its own definition of related business entities, and therefore recommended that HHS defer to the States as to which entities are included instead of using ''controlled group'' as defined by the Code.

Response: States may continue to interpret and apply market withdrawal provisions differently under State law, provided the State law interpretation does not prevent the application of the market withdrawal provision under the

[11] As we explained in an FAQ related to Market Reforms, *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/qa_hmr.html*, enrollees in a grandfathered product can maintain that coverage if that coverage continues to be offered and the coverage does not make a change that would cause the product to cease to be grandfathered as provided for in regulations. See 26 CFR 54.9815–1251(g)(1); 29 CFR 2590.715–1251(g)(1); and 45 CFR 147.140(g)(1).

Federal standard. In other words, States may use a definition of ''controlled group'' that is narrower than the Code definition, but may not use a broader definition, because a broader definition would at least in some instances prevent the application of the Federal provision. We codify this State flexibility in the text of the regulation. HHS will use the definition of ''controlled group'' finalized in this rule for States where HHS is responsible for enforcement of the guaranteed renewability provisions of the PHS Act.

Comment: One commenter recommended that HHS maintain the current requirements that enrollees be notified within a given timeframe that an issuer is undergoing a corporate change, which may result in changes to the enrollee's benefits and other issuer policies.

Response: All notice requirements continue to apply. Issuers should refer to section XI of the Bulletin regarding Updated Federal Standard Renewal and Product Discontinuation Notices that HHS released on September 2, 2016.[12] We note that a renewal notice, rather than a discontinuation notice, is appropriate in the case of a product transfer within an issuer controlled group where any changes to the transferred product are within the scope of a uniform modification.

Comment: Several commenters encouraged HHS to provide additional technical guidance and clarification as part of the Uniform Rate Review (URR) Instructions on how product transfers to a different issuer within a controlled group would be handled for purposes of rate review.

Response: We intend to provide technical guidance as part of the 2018 URR Instructions.

ii. Replacement of Entire Product Portfolio

We proposed that it may not be appropriate to interpret an issuer's actions to constitute a market withdrawal resulting in a 5-year ban on market re-entry when an issuer discontinues offering all of its products and seeks to offer new products within the same market, even if the changes made to the new products exceed the scope of a uniform modification of coverage.[13] State regulators and other interested parties indicated that this scenario is not viewed by some States as a market withdrawal under State law, as long as the issuer continues to provide a product in the same market in which it previously offered the discontinued products.[14]

To prevent issuers from avoiding Federal rate review requirements by altering all of their existing products, we proposed to permit an issuer to replace its entire portfolio of products without triggering the 5-year ban under the market withdrawal provision, provided the issuer: (1) Reasonably identifies which newly offered product (or products) replace which discontinued product (or products); and (2) subjects the new product (or products) to the Federal rate review process under part 154 (to the extent otherwise applicable to coverage of the same type and in the same market (for example, the Federal rate review process does not apply in the U.S. territories)) as if it were the same product as the discontinued product it replaces.[15] An issuer's identification of which new product replaces which discontinued product will be considered reasonable if it reflects the issuer's expectations regarding significant transfer of enrollment from one product to the other (for example, because the products have been cross-walked for that purpose).

To reflect these exceptions to market withdrawal requirements, we proposed to add new paragraph (d)(3) to § 147.106 to provide that an issuer has not discontinued offering all health insurance coverage in a market if the issuer continues to offer and make available a product in the applicable market in a State and subjects the new product to the rate review requirements under part 154 of this title (to the extent otherwise applicable to coverage of the same type and in the same market) as if that part applied to that product, and reasonably identifies a discontinued product that corresponds to the new product for purposes of such rate review. We are finalizing the proposal as proposed by adding § 147.106(d)(3) with minor non-substantive modifications to the structure and text of the regulation, and also making conforming amendments to §§ 146.152(d)(3) and 148.122(e)(4).

Comment: Some commenters suggested that the Federal rate review process should be required when an issuer replaces only a few products (as opposed to when they replace all products). Most commenters supported subjecting new products to rate review when those products are replacing discontinued products, noting that rate review is an important consumer protection.

Response: When an issuer replaces all products in a market, we are requiring the issuer to subject the new products to the Federal rate review process as a condition for not triggering a market withdrawal and the 5-year ban on market re-entry. States may impose rate review requirements in more instances.

(2) Guaranteed Renewability in the Individual Market and Medicare Eligibility

Section 1882(d)(3) of the Act prohibits the sale or issuance of an individual health insurance policy to an individual entitled to benefits under Part A or enrolled under Part B of Medicare[16] with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under Medicare or Medicaid (the anti-duplication provision). Sections 2703 and 2742 of the PHS Act generally require guaranteed renewability of coverage for employers and individuals in the group and individual health insurance markets. Under existing regulations at §§ 147.106(h)(2) and 148.122(b)(2) implementing the guaranteed renewability requirement, Medicare eligibility or entitlement is not a basis for nonrenewal or termination of an individual's health insurance coverage in the individual market.

We sought comments on whether the guaranteed renewability statute and the anti-duplication provision should together be interpreted to require or prohibit renewal of a Medicare beneficiary's individual market coverage, if the issuer has knowledge that the renewed coverage would duplicate the Medicare beneficiary's benefits: (1) In a plan under the same contract of insurance; (2) under a plan that was modified but is considered under the guaranteed renewability provisions to be the same plan but that

[12] Updated Federal Standard Renewal and Product Discontinuation Notices. Sept 2, 2016. Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-Updated-Federal-Standard-Renewal-and-Product-Discontinuation-Notices-090216.pdf.*

[13] Uniform Modification and Plan/Product Withdrawal FAQ. Jun. 15, 2015. Available at *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/uniform-mod-and-plan-wd-FAQ-06-15-2015.pdf.*

[14] We also note that, in the context of reenrollment through an Exchange in coverage under a different product, we stated that, under certain limited circumstances, enrollments completed under the hierarchy specified in § 155.335(j) will be considered to be a renewal of the enrollee's coverage.

[15] Under this interpretation, issuers of health insurance products offered in the U.S. territories would be able to replace their products in those markets without subjecting the new products to the Federal rate review process and without triggering the 5-year ban.

[16] For information on when individuals are entitled to, eligible for, or able to enroll in Medicare, see *https://www.cms.gov/medicare/eligibility-and-enrollment/origmedicarepartabeligenrol/index.html.*

would require a new contract; (3) under a different plan within the same product; (4) under a different product with the same issuer; or, as discussed earlier in this preamble; (5) under the same product offered by a different issuer within the issuer's controlled group.

We are finalizing an interpretation of the anti-duplication provision that prohibits issuers that have knowledge that an enrollee in individual market coverage is entitled to Medicare Part A or enrolled in Medicare Part B from renewing the individual market coverage if it would duplicate benefits to which the enrollee is entitled, unless the renewal is effectuated under the same policy or contract of insurance. This policy will become effective with the effective date of this final rule.

Comment: A number of commenters agreed that Medicare eligible individuals should not be allowed to enroll in or renew coverage under individual market policies; that requiring re-enrollment of Medicare beneficiaries into individual health insurance coverage violated the anti-duplication provisions of the statute and placed the health insurance issuers in an untenable situation of having to choose between complying with the guaranteed renewability provision or the anti-duplication provision. Several commenters expressed concerns that individuals enrolled in Medicare and those who are eligible for but not yet covered by Medicare present a significant burden to the single risk pool. Other commenters, however, indicated that Medicare beneficiaries should not be denied the option to remain in individual health insurance coverage, since there are situations in which individual health insurance coverage may be the better option for an individual than Medicare Parts A or B. Another commenter stated that if ''renewal'' and ''sale or issuance'' meant the same thing for purposes of interpreting the anti-duplication provision, the law which provides for ''guaranteed issuance of coverage in the individual and group market'' would either have no meaning or would be redundant to, and contradict the provisions that address renewability.

Response: We agree that the anti-duplication provision should be interpreted to prohibit the re-enrollment in individual health insurance coverage of an individual who is entitled to Medicare Part A or enrolled in Part B when the requisite knowledge standard about duplication is met, provided the re-enrollment is into a policy or contract of insurance other than the same policy or contract that the enrollee currently holds. The phrase ''to sell or issue'' in section 1882(d)(3) of the Act is broad, and interpreting it to include re-enrollments other than renewals under the same contract of insurance is supported by the anti-duplication provision's purpose and statutory context. A renewal under the Act need not be the same as a renewal for purposes of an issuer's satisfying its guaranteed renewability obligations under the PHS Act. The latter meaning has been broadened since we last addressed this issue in rulemaking, and we now have additional years of experience with respect to that meaning. Adopting this interpretation does not equate the phrase ''to sell or issue'' with ''renewal.'' As explained, we do not understand the phrase to apply to renewals under the same contract of insurance. We note further that the meaning of the phrase ''to sell or issue'' in the context of section 1882(d)(3) of the Act is distinct from the meaning of the particular terms of sections 2702 and 2703 of the PHS Act. The guaranteed availability provision of section 2702 of the PHS Act states that issuers must ''accept'' individuals who apply for coverage that is offered in a market in a State, and the guaranteed renewability provision (section 2703(a) of the PHS Act) states that issuers must generally ''renew or continue in force'' coverage at the option of the individual.

Under our interpretation, issuers of individual market coverage must not re-enroll enrollees who become entitled to Medicare Part A or enrolled in Medicare Part B in coverage, if the issuer has knowledge that the coverage would duplicate benefits to which the enrollee is entitled, unless the coverage can be renewed under the same policy or contract of insurance. Whether any changes in the terms of coverage would require the issuance of a new policy or insurance contract would be determined under applicable State law.

For the reasons stated above, we are amending §§ 147.106(h)(2) and 148.122(b)(2) to finalize an interpretation of the anti-duplication provision that prohibits issuers from re-enrolling in individual market coverage an enrollee who is entitled to Medicare Part A or enrolled in Medicare Part B if the issuer has knowledge that the coverage would duplicate benefits under title XVIII or title XIX of the Act to which the enrollee is entitled, unless the renewal is effectuated under the same policy or contract of insurance.

Comment: Some commenters recommended that we create a more robust screening process in the Federally-facilitated Exchanges (FFEs) for individuals nearing their Medicare eligibility. One commenter recommended that we should require SBEs also to screen for Medicare eligibility and enrollment.

Response: The FFEs have begun conducting periodic data matching, as described in § 155.330(d), to identify Exchange enrollees on whose behalf advance payments of the premium tax credit (APTC) is being paid who may be enrolled in Medicare that is considered minimum essential coverage. We are working toward a more robust process for screening for Medicare eligibility and enrollment for individuals who are applying for individual health insurance coverage in the FFEs and State-based Exchanges on the Federal platform (SBE–FPs), and encourage SBEs to do the same.

4. Part 148—Requirements for the Individual Health Insurance Market

a. Guaranteed Renewability of Individual Health Insurance Coverage (§ 148.122)

For a discussion of the provisions related to part 148, please see the preamble to § 147.106.

5. Part 152—Pre-Existing Condition Insurance Plan Program

a. Pre-Existing Condition Insurance Plan Program (§ 152.45)

Section 1101 of the Affordable Care Act directed HHS to establish a temporary Federal high risk pool program in 2010 to provide health insurance coverage to individuals who were U.S. citizens or nationals or lawfully present in the United States, did not have other health insurance coverage in the 6 months preceding enactment, and had a pre-existing condition. Section 1101(g)(3)(B) directed HHS to develop procedures to provide for the transition of eligible individuals enrolled in health insurance coverage offered through the high risk pool HHS established into QHPs offered through an Exchange. Those procedures should, in particular, ensure that there is no lapse in coverage with respect to the individual and may extend coverage after the termination of the risk pool involved, if the Secretary determines necessary to avoid such a lapse.

Starting in 2010, shortly after the Affordable Care Act was enacted, HHS established and began operating the PCIP Program required under section 1101, to provide health insurance coverage to eligible individuals, as defined in the Affordable Care Act. Beginning in 2013, HHS worked to enroll these individuals in QHPs through the Exchanges. For a variety of reasons, however, individuals from the

high-risk pool established under section 1101 may find it difficult to obtain and maintain coverage in QHPs without a lapse in coverage.

In the proposed rule, we sought information regarding whether and how the remaining funds provided under section 1101 might be used to ensure the successful transition of former Pre-Existing Condition Insurance Plan (PCIP) enrollees to the Exchange without a lapse in coverage, consistent with section 1101(g)(3)(B) and its objective of ensuring that high-risk individuals with preexisting conditions are able to transition successfully into the new Exchanges without a lapse in coverage. We sought information, in particular, on the best ways to identify former PCIP enrollees in a QHP of an issuer that has participated in the Exchange from 2014 to 2017, available methods for determining their claims costs, and the necessity of taking steps to ensure that they do not experience a lapse in coverage. If it is not possible to identify former PCIP enrollees, HHS also sought information about other appropriate measures to assess the size and impact of former PCIP enrollment on existing issuers.

Comments: Commenters agreed with HHS's continued focus on ensuring coverage for high-risk individuals in the Exchanges. One commenter noted that although they support focusing on this patient population, they would not support efforts to revert to PCIP coverage. Several commenters provided suggestions on ensuring a patient's transition is a smooth, transparent process and that enrollees do not experience lapses in coverage, especially with respect to medications and benefits formerly provided by PCIP. One commenter recommended using the remaining funds to help ensure continuity of care by subsidizing deductibles or out-of-pocket costs under QHPs or supporting case managers working with former PCIP enrollees. Another suggestion was to use remaining PCIP funds to offset issuer costs for high-cost enrollees. We received suggestions on how to best identify former PCIP enrollees, such as working with AIDS Drug Assistance Programs and prior PCIP administrators (both at the State and Federal level). Commenters noted that current QHP issuers are unlikely to be able to identify individuals as prior PCIP enrollees.

Response: We thank commenters for their input. We continue to examine this issue, and will not take action on it in this final rule.

6. Part 153—Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment Under the Affordable Care Act

a. Sequestration

In accordance with the Office of Management and Budget (OMB) Report to Congress on the Joint Committee Reductions for Fiscal Year 2017,[17] both the transitional reinsurance program and permanent risk adjustment program are subject to the fiscal year 2017 sequestration. The Federal government's 2017 fiscal year began on October 1, 2016. The reinsurance program is sequestered at a rate of 6.9 percent for payments made from fiscal year 2017 resources (that is, funds collected during the 2017 fiscal year). To meet the 6.9 percent sequestration requirement for the risk adjustment program for fiscal year 2017 noted in the OMB Report to Congress, risk adjustment payments made using fiscal year 2017 resources in all States where HHS operates risk adjustment, will be sequestered at a rate of 7.1 percent.

HHS, in coordination with OMB, has determined that, under section 256(k)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, and the underlying authority for these programs, the funds that are sequestered in fiscal year 2017 from the reinsurance and risk adjustment programs will become available for payment to issuers in fiscal year 2018 without further Congressional action. If Congress does not enact deficit reduction provisions that replace the Joint Committee reductions, these programs would be sequestered in future fiscal years, and any sequestered funding would become available in the fiscal year following that in which it was sequestered.

Comment: One commenter noted that any reduction in funds that support risk adjustment or reinsurance functions will reduce the ability for these programs to fulfill their purpose.

Response: The sequestering of reinsurance and risk adjustment payments will not affect the overall funding of the reinsurance or risk adjustment programs. Funds that are sequestered in fiscal year 2017 from the reinsurance and risk adjustment programs will become available for payment to issuers in fiscal year 2018.

[17] OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2017. Feb. 9, 2016. Available at *https://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/sequestration/jc_sequestration_report_2017_house.pdf.*

b. Definition of Large Employer for the Risk Adjustment and Risk Corridors Programs (§ 153.20)

We proposed deleting the definition of ''large employer'' set forth in § 153.20, which defines a large employer as having the meaning given to the term at § 155.20.[18] In addition to the proposed rule, HHS provided notice of our intent to make this change in an FAQ [19] that clarified how an issuer should count an employer's employees to determine whether an employer is a small employer or large employer for purposes of the risk adjustment and risk corridors programs.

In that FAQ, we clarified that for the risk adjustment program, the issuer should use the employee counting method used to determine group size under State law, unless that counting method does not account for employees who are not full-time. If the State counting method does not take non-full-time employees into account, then the issuer should use the counting method under section 4980H(c)(2) of the Code.[20] The FAQ also noted that under section 1304(b)(4)(D) of the Affordable Care Act and § 155.710(d), when a small employer participating in a Small Business Health Options Program (SHOP) ceases to be a small employer solely by reason of an increase in the number of its employees, it will continue to be treated as a small employer for purposes of SHOP participation for as long as it continues to purchase coverage through the SHOP, and the issuer should treat such an employer as a small employer for purposes of risk adjustment. We note that nothing in this final rule supersedes or conflicts with the option under section 1312(f)(2)(B)(i) of the Affordable Care Act, which will allow large employers to participate in a SHOP, at the option of a State.

In the FAQ, HHS also clarified that for the risk corridors program, the issuer

[18] Section 155.20 defines a large employer, in connection with a group health plan with respect to a calendar year and a plan year, as an employer that employed an average of at least 51 employees on business days during the preceding calendar year and that employs at least 1 employee on the first day of the plan year. In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a large employer is based on the average number of employees that it is reasonably expected the employer will employ on business days in the current calendar year. A State may elect to define large employer by substituting ''101 employees'' for ''51 employees.'' The number of employees must be determined using the method set forth in section 4980H(c)(2) of the Code.

[19] FAQs #15450 and #15449. April 12, 2016. Available at *https://www.regtap.info/faq_viewu.php?id=15450* and *https://www.regtap.info/faq_viewu.php?id=15449.*

[20] See 79 FR 8544.

should use the employee counting method used to determine group size under State law (see § 153.510(f)). However, under section 1304(b)(4)(D) of the Affordable Care Act and § 155.710(d), when a small employer participating in a SHOP ceases to be a small employer solely by reason of an increase in the number of its employees, it will continue to be treated as a small employer for purposes of SHOP participation for as long as it continues to purchase coverage through the SHOP, and the issuer should treat such an employer as a small employer for purposes of risk corridors. We are finalizing the deletion of the definition of ''large employer'' set forth in § 153.20 as proposed.

Comment: Some commenters supported this proposal, noting that it would allow employers participating in the SHOP to have their experience included in risk adjustment and risk corridors if the company was considered a ''small employer'' but grew beyond the definition of small employer while maintaining SHOP coverage. Another commenter supported the proposal stating that HHS should treat an employer as small or large for risk adjustment purposes based on the rules for determining the employer's status for pricing purposes.

Response: We agree with the commenters and are finalizing the deletion of the definition of ''large employer'' set forth in § 153.20 as proposed.

Comment: One commenter requested that HHS propose through notice and comment rulemaking the adoption of a consistent counting methodology to align the methods used to count employees for purposes of determining group sizes across all applicable Affordable Care Act provisions, and requested that State and Federal regulators use the same counting methodology.

Response: We appreciate the suggestion for consistency and uniformity; however, the comment is outside the scope of this rulemaking. HHS believes that the deletion of the definition of ''large employer'' set forth in § 153.20 helps to achieve greater consistency across Federal programs.

c. Provisions and Parameters for the Risk Adjustment Program

In subparts D and G of 45 CFR part 153, we established standards for the administration of the risk adjustment program. The risk adjustment program is a program created by section 1343 of the Affordable Care Act that transfers funds from lower risk, non-grandfathered plans to higher risk, non-grandfathered plans in the individual and small group markets, inside and outside the Exchanges. In accordance with § 153.310(a), a State that is approved or conditionally approved by the Secretary to operate an Exchange may establish a risk adjustment program, or have HHS do so on its behalf.

On March 31, 2016, HHS convened a public conference to discuss potential updates to the HHS risk adjustment methodology for the 2018 benefit year and beyond. Prior to the conference, we also issued a White Paper that was available for public comment.[21] The conference and White Paper focused on what we have learned from the 2014 benefit year of the risk adjustment program, and specific areas of potential refinements to the methodology, including prescription drug modeling, addressing issues resulting from partial year enrollment, future recalibrations using risk adjustment data, and options for the risk adjustment transfer formula. We received numerous thoughtful and substantive comments to the White Paper and at the conference, which directly informed the policies in this Payment Notice. In addition, we received numerous thoughtful and substantive comments to the risk adjustment provisions of the proposed rule, which we discuss in detail below.

(1) Risk Adjustment Applied to Plans in the Individual and Small Group Markets (§ 153.20)

Section 1312(c) of the Affordable Care Act directs issuers to use a single risk pool for a market—the individual or small group market—when developing rates and premiums. Section 1312(c)(3) of the Affordable Care Act gives States the option to merge the individual and small group market into a single risk pool. To align risk pools for the risk adjustment program and rate development, we stated in the 2014 Payment Notice that we would merge markets when operating risk adjustment on behalf of a State if the State elects to do the same for single risk pool purposes.[22] When the individual and small group markets are merged, we stated that the State average premium would be the average premium of all applicable individual and small group market plans in the applicable risk pool, and calculations under the risk adjustment transfer equation would occur across all plans in the applicable risk pool in the individual and small group markets.

Under the section 1312(c)(3) definition of a merged market and its implementing regulations at §§ 156.80 and 147.104, issuers in a merged individual and small group market must offer the same plans at the same rates to all applicants in the merged market, must offer coverage on a calendar year basis, and may not make quarterly rate adjustments to rates for small group market plans. Some States with markets that are not merged under the Federal merged market provisions require issuers to use a combined individual and small group experience to establish a market-adjusted index rate, but separate the markets for applying plan adjustment factors and for other purposes. This allows small group issuers to make quarterly rate changes that would not otherwise be allowable under the definition at section 1312(c)(3).

Because States that use a combined individual and small group experience to establish a market-adjusted index rate operate in large part as a merged market for purposes of rate setting, we believe they should be risk adjusted as merged markets if the State so elects. Risk adjustment directly impacts rate setting, and as such, should reflect the markets in which States allow issuers to set premiums. Therefore, we proposed to expand our interpretation of merged market for purposes of HHS risk adjustment as described in the 2014 Payment Notice to include States that meet the definition of merged market at section 1312(c)(3), as well as, at State election, States that use a combined individual and small group experience to establish a market-adjusted index rate, beginning with risk adjustment for the 2017 benefit year. We are finalizing this provision as proposed.

Comment: One commenter supported this proposal but requested that HHS make this policy effective beginning with the 2018 benefit year. Another commenter supported the proposal but only if the applicable State agreed. This commenter also requested that HHS consider a different solution that would allow merged market States to have quarterly increases in their small group market.

Response: In light of State input and interest in this proposal, HHS, beginning with the 2017 benefit year risk adjustment, will expand the interpretation of merged market for purposes of HHS risk adjustment as described in the 2014 Payment Notice to include States that meet the definition of merged market at section 1312(c)(3),

[21] March 31, 2016, HHS-Operated Risk Adjustment Methodology Meeting: Discussion Paper. March 24, 2016. Available at *https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/RA-March-31-White-Paper-032416.pdf.*

[22] See 78 FR at 15419.

as well as, at State election, States that use a combined individual and small group experience to establish a market-adjusted index rate. As stated in the proposed rule, HHS intends to work closely with States that use a combined individual and small group experience to establish a market-adjusted index rate to determine whether they elect to be treated as a merged market for purposes of HHS risk adjustment.

(2) Overview of the HHS Risk Adjustment Model (§ 153.320)

The HHS risk adjustment model predicts plan liability for an average enrollee based on that person's age, sex, and diagnoses (risk factors), producing a risk score. The HHS risk adjustment methodology utilizes separate models for adults, children, and infants to account for cost differences in each of these age groups. In each of the adult and child models, the relative costs assigned to an enrollee's age, sex and diagnoses are added together to produce a risk score. Infant risk scores are determined by inclusion in one of 25 mutually exclusive groups, based on the infant's maturity and the severity of its diagnoses. If applicable, the risk score for adults, children, or infants is multiplied by a cost-sharing reductions adjustment.

The enrollment-weighted average risk score of all enrollees in a particular risk adjustment covered plan, also referred to as the plan liability risk score, within a geographic rating area is one of the inputs into the risk adjustment payment transfer formula, which determines the payment or charge that an issuer will receive or be required to pay for that plan. Thus, the HHS risk adjustment model predicts average group costs to account for risk across plans, which accords with the Actuarial Standards Board's Actuarial Standards of Practice for risk classification.

(3) Proposed Updates to the Risk Adjustment Model (§ 153.320)

For the 2018 benefit year risk adjustment model, HHS will continue to incorporate the methodological improvements finalized in the 2017 Payment Notice, such as incorporating preventive services in our simulation of plan liability and using more granular trend rates that better reflect the growth in specialty drug expenditures and drugs generally, as compared to medical and surgical expenditures. Consistent with our discussion in the White Paper, we are finalizing a number of updates to the risk adjustment model, including: (1) Adjustment factors for partial year enrollment; (2) prescription drug utilization factors; and (3) modifying transfers to account for high-cost enrollees. We will also recalibrate our risk adjustment models using 2015 MarketScan® data blended with 2013 and 2014 MarketScan® data following the publication of the final Payment Notice for the 2018 benefit year. Additionally, we note that the HHS risk adjustment methodology will remain in effect for future benefit years until updated through rulemaking, or, in the case of updates of coefficients for the risk adjustment model, through guidance.

Comment: We received several comments in support of HHS engaging the public and seeking feedback through the White Paper and conference based on the experience from the first year of the risk adjustment program operation, and requesting HHS to continue to seek feedback on updating the risk adjustment model. We received a request for HHS to perform a comprehensive study of risk adjustment across Exchanges, Medicare Advantage, Medicaid, Accountable Care Organizations, and Medicare Shared Savings Program participants to better understand the limitations and success of each program and then apply lessons learned to improve risk adjustment for each program.

Response: We appreciate public feedback on HHS's analysis of the risk adjustment program and ways to improve and update the program. The HHS-operated risk adjustment methodology serves different program goals and operates under different conditions, compared to the risk adjustment programs used by other CMS programs. As we noted in our White Paper and conference in March 2016, we remain committed to evaluating the program and engaging stakeholders in the program's policy development. We will continue to evaluate how our experience with other CMS risk adjustment programs may inform the HHS-operated risk adjustment program.

Comment: One commenter noted that HHS should consider including in the risk adjustment risk score calculation data from lower-intensity care settings, such as skilled nursing facilities, home health, and End Stage Renal Disease (ESRD) facilities. The commenter also noted that HHS should also reconsider its International Classification of Diseases (ICD)–10 mapping, specifically for HCC 88 Major Depressive and Bipolar Disorder.

Response: We do not use data from lower intensity care settings due to the potential for significant coding variation. We sought comment on the ICD–10 crosswalk prior to implementation, and will continue to review all ICD–10 updates and mappings annually, as code updates are released.

Comment: One commenter noted that HHS should create a prospective risk adjustment model for the individual and small group markets instead of the current concurrent model. At the same time, this commenter recommended that HHS not allow issuers to report prior enrollee data for risk adjustment, to establish a level playing field for new entrants. The commenter suggested use of a ''credibility-based'' adjustment to risk adjustment to compensate for the information imbalance between new and existing issuers.

Response: We believe that a concurrent risk adjustment model continues to be more appropriate for the individual and small group markets. Concurrent models tend to emphasize the prediction of costs associated with current year acute health events. A considerable amount of the costs of chronic conditions are associated with acute exacerbations, which a concurrent model will better capture. Concurrent models can also capture the very high costs of conditions such as organ transplants, metastatic cancer, and low-birthweight babies that reduce or eliminate the disincentive for plans to contract with providers that treat these conditions. Prospective models tend to emphasize the impact of ongoing chronic conditions on costs (as opposed to random current year costs that can be pooled as ''insurance risk''). No previous year information on health status existed for the first year of the Affordable Care Act-established individual and small group markets in 2014. Additionally, unlike with Medicare, enrollees move in and out of enrollment in the individual and small group markets and move across issuers. A prospective model was, therefore, infeasible for the first year of the Affordable Care Act risk adjustment program, and we believe could be inaccurate today. Shifting to a prospective model would also require us to increase the lag between modeling and announcement of the risk adjustment model, on the one hand, and rate-setting, on the other. Additionally, in response to the comment regarding not allowing issuers to report prior year enrollee data, we clarify that HHS does not track enrollees across benefit years, and that issuers are only required to report claims data for enrollees for the applicable benefit year.

i. Partial Year Enrollment

After the 2014 benefit year of risk adjustment, we received feedback indicating that some issuers

experienced higher than expected claims costs for partial year enrollees. We sought comment in the 2017 Payment Notice on how the risk adjustment methodology could be adjusted to more directly reflect the experience of partial year enrollees, and we received comments generally supporting an adjustment addressing partial year enrollees in the risk adjustment model. We also received feedback to the White Paper that some believe the methodology does not fully capture the risk associated with enrollees with chronic conditions who may not have accumulated diagnoses in their partial year of enrollment.

In general, we believe that individual and small group health plans are risk adjusted accurately under the HHS risk adjustment methodology. In light of our experience with the 2014 benefit year, we have observed that risk adjustment may not fully account for when a plan's enrollees differ substantially from the market average with respect to characteristics that are not adjusted for in the risk adjustment model. For example, if a plan has an enrollee population with enrollment duration that differs from the market average, and the risk associated with the enrollment duration is not fully captured through other aspects of the methodology, then for that plan, partial year enrollment may not be fully accounted for in the HHS risk adjustment methodology. As we noted in the White Paper, if the risk adjustment methodology does not fully capture risk for partial year enrollment, and if the plan had lower than average enrollment duration, the plan's risk score relative to other plans might be lower than it might have been otherwise.[23]

As we discussed in the White Paper, we reviewed the predicted expenditures, actual expenditures, and predictive ratios (that is, the ratios of predicted to actual weighted mean plan liability expenditures) by enrollment duration groups (for each: 1 month, 2 months, and so on up to 12 months) annualized for 2014 MarketScan® adults in our risk adjustment concurrent modeling sample. We found that actuarial risk for all adult enrollees with short enrollment periods tends to be slightly under-predicted, and for adult enrollees with full enrollment periods (12 months) tends to be over-predicted in our methodology. One potential explanation for these results is that because risk adjustment is calculated on a per member per month basis, the model predicts costs for chronic conditions, which are often spread more evenly over time, better than costs for sudden acute events, which are often concentrated in a small number of months, when the enrollment is only for part of the year.

We discussed various approaches to address this issue in the White Paper, including the use of additional factors and the use of wholly separate models that account for duration of enrollment and metal level.

There was a broadly held preference among commenters to the White Paper for adding enrollment duration binary indicator variables (indicating enrollment duration of: 1 month, 2 months, and so on up to 11 months[24]) as additional risk factors, as opposed to separate models based on enrollment duration. After reviewing this feedback, we announced on June 8, 2016, that we intended to propose that, beginning for the 2017 benefit year, the risk adjustment model include adjustment factors for partial year enrollees in risk adjustment covered plans.[25]

Based on analysis we performed on the MarketScan® data, the use of additional risk factors by number of enrollment months that decrease monotonically as the number of months of enrollment increases (with 12 months being the reference group) appears to best address partial year enrollment in the risk adjustment model in the short term, starting in 2017. We also believe that our proposal to add prescription drug utilization in the risk adjustment model will capture additional costs for partial year enrollees beginning in the 2018 benefit year (see discussion below).

We are recalibrating the 2017 risk adjustment adult model to reflect the incorporation of partial year enrollment duration factors. Those factors are labeled ''one month of enrollment . . . eleven months of enrollment'' in the list of factors for the final 2017 risk adjustment adult model at the bottom of Table 2.[26] We are finalizing the incorporation of partial year enrollment duration factors in the risk adjustment model methodology for the reasons discussed above, starting with the 2017 benefit year. We are finalizing our proposal to amend our regulations at § 153.320(a)(1) to allow for HHS to make this update for the 2017 benefit year risk adjustment. Currently, this provision states that a risk adjustment methodology must be Federally certified, and one way a risk adjustment methodology may become Federally certified is to be developed by HHS and published in the applicable annual payment notice. We are amending this provision to state that the methodology will be developed by HHS and published in rulemaking in advance of the benefit year. While HHS would generally make changes to the risk adjustment methodology in the applicable annual payment notice, under this rule, in cases where we have identified a change that we can implement in other rulemaking prior to the benefit year, and where we can provide issuers with sufficient notice and detail on the proposed change so that issuers may reasonably account for the change, HHS will have the authority to implement the change prior to the beginning of the applicable benefit year. We notified issuers of our intent to propose the change regarding partial year enrollment in prior guidance, and provided significant detail on the incorporation of an adjustment factor to account for partial year enrollment beginning with the 2017 benefit year.[27] We are finalizing this incorporation to the 2017 adult risk adjustment models as proposed.

Comment: Commenters generally supported the partial year adjustment and recommended implementing the policy for the 2017 benefit year risk adjustment, noting that this adjustment will alleviate some uncertainty around health risk of partial year enrollees. A few commenters recommended that changes to the methodology be limited to the applicable annual payment notice, and did not support the adjustment to the 2017 benefit year methodology, noting that they would have liked the coefficients for the 2017 benefit year risk adjustment model prior to rate setting. Other commenters supported addressing partial year enrollment in the 2017 benefit year risk adjustment methodology because issuers had adequate time to incorporate this change with substantial issuer engagement and warning during rate setting. Commenters stated that without the level of issuer warning and

[23] March 31, 2016, HHS-Operated Risk Adjustment Methodology Meeting: Discussion Paper, at page 36. March 24, 2016. Available at *https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/RA-March-31-White-Paper-032416.pdf.*

[24] Twelve months is the reference group and therefore is not included.

[25] March 31, 2016, HHS-Operated Risk Adjustment Methodology Meeting Questions & Answers. June 8, 2016. Available at *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/RA-OnsiteQA-060816.pdf.*

[26] This table replaces Table 1 published at 81 FR 12220 through 12223 as the final adult model for the 2017 benefit year.

[27] *March 31, 2016, HHS-Operated Risk Adjustment Methodology Meeting Questions & Answers. June 8, 2016. Available at https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/RA-OnsiteQA-060816.pdf.*

engagement that HHS provided for the 2017 benefit year methodology adjustment, making any changes to the methodology after rate setting and close to the beginning of the benefit year could create uncertainty, and the commenters would not support other changes in those types of instances. Some commenters were concerned about this precedent and recommended that this adjustment to the risk adjustment methodology after the applicable annual payment notice be an exception to the policy to publish changes in the applicable annual payment notice, and not a regular occurrence. Other commenters requested that HHS continue to make any changes to the risk adjustment methodology through a regulatory or subregulatory process with at least a 30-day comment period, and HHS publish clear guidelines as to future changes that could be made after the benefit year's Payment Notice. One commenter suggested that HHS implement the partial year enrollee adjustment changes beginning for the 2016 benefit year, stating that issuers would have sufficient time for this change to be implemented; another supported implementing partial year adjustment factors retroactively, for as early as the 2014 benefit year risk adjustment model.

Response: We are finalizing our proposal to adjust for partial year enrollment beginning with the 2017 benefit year. We recognize that issuers incorporate the applicable benefit year's risk adjustment methodology in their rate setting. Following the Risk Adjustment Conference, we announced our intent to propose to update the risk adjustment methodology for the 2017 benefit year with the partial year adjustment factors in our June 8, 2016, press release. We intend to continue updating the risk adjustment methodology for future years through notice and comment rulemaking, with adequate notice to the issuers prior to rate setting. We did not propose to, and are not changing, the risk adjustment methodology for the 2014, 2015, and 2016 benefit years. As these benefit years have already begun, we could not implement such a change prior to the applicable benefit year or provide advance notice to permit issuers to incorporate the applicable benefit year's risk adjustment methodology in their rate setting. However, for the 2017 benefit year, we provided advance notice to issuers prior to rate setting, and believe an adjustment for partial year enrollees will better compensate issuers with higher than average partial year enrollees.

Comment: Most commenters supported our proposal to amend our regulations at § 153.320(a)(1) to allow for instances such as for the partial year adjustment for the 2017 benefit year, when HHS can provide sufficient notice. A few commenters suggested that HHS state in the regulation that it may make such changes outside the applicable payment notice with sufficient notice and prior to rate setting. Most commenters supported any adjustments as long as they are in advance of rate setting. A few commenters did not support the amendment to the regulation, and requested that HHS make all changes to the methodology in the applicable payment notice.

Response: Our amendment to our regulation at § 153.320(a)(1) would continue to require that HHS make any changes to the risk adjustment methodology in advance of the benefit year in rulemaking. We are finalizing our proposal to amend our regulation at § 153.320(a)(1) to allow for changes to the methodology in advance of the benefit year where we can provide adequate notice to issuers prior to rate setting.

We also proposed to incorporate partial year enrollment duration factors in the 2018 risk adjustment adult model in the same manner that we proposed for the 2017 benefit year. Those factors are labeled ''one month of enrollment . . . eleven months of enrollment'' in the list of factors for the 2018 risk adjustment adult model near the bottom of Table 3. We are finalizing partial year enrollment duration factors for the 2018 adult risk adjustment models.

We did not propose to include the partial year enrollment adjustment factor in the child and infant models as those models are based on a smaller dataset that does not provide adequate representation of partial year enrollment in these populations. We will reassess both the partial year enrollment adjustment, and whether we can make this adjustment in the child and infant models in the future. We will also continue to explore approaches under which we would use separate models for enrollees with different enrollment durations, rather than including partial year enrollment factors in the risk adjustment model, and may implement such an approach in future years. While we do not believe, based on the current data available and the analyses we have been able to perform, that using separate models for each enrollment duration is currently feasible, we believe that using separate models may better capture how the pattern of costs associated with particular diagnoses varies across enrollees with different enrollment duration, particularly for sudden acute events.

Comment: Commenters supported incorporating partial year adjustment duration factors for the 2018 benefit year. One commenter supported the adjustment but noted that MarketScan® data is inadequate for this adjustment and suggested that HHS use enrollee-level External data gathering environment (EDGE) data for further analyses on partial year adjustment. Another commenter noted that the proposed partial year adjustment factors would still undercompensate for special enrollment period enrollees but are adequate for partial year enrollees who began enrollment during the open enrollment period.

Other commenters recommended that HHS use partial year duration factors combined with HCCs. One commenter expressed concern that the proposed adjustment treats partial year enrollees with acute and chronic conditions equally, and that this would excessively favor issuers with partial year enrollees.

One commenter disagreed with this adjustment for the 2018 benefit year as well, and suggested changing special enrollment period regulations instead; a few other commenters suggested HHS to do so in conjunction with this adjustment. Another commenter was concerned that the duration factors may reward plans that prompt consumers to switch plans and may create solvency issues for issuers with longer-term steady enrollments. Additionally, a commenter noted that HHS should analyze EDGE data to assess the variance in partial year enrollment for issuers, and if this variance is consistent across issuers, on average, risk adjustment would not need to be adjusted for partial year enrollment. Another commenter noted that HHS should track enrollees across issuers so that full risk adjustment factors can be applied for individuals that switch plans mid-year.

The commenters also recommended adding the partial year adjustment to child and infant models.

Response: We are finalizing the incorporation of partial year adjustment factors to the 2018 risk adjustment adult models as proposed. We will continue to evaluate this approach. In particular, we anticipate using EDGE data to evaluate whether model accuracy could be improved by estimating separate duration factors for special enrollment period enrollees versus partial year enrollees who began enrollment during the open enrollment period, an issue

that cannot be addressed using MarketScan® data. We clarify that risk scores are calculated including enrollees' enrollments across all of an issuer's risk adjustment covered plans, and so we do not believe the adjustment would encourage issuers to shift consumers to other plans. Because we are unable to track enrollees across issuers, the partial year adjustment factor would adjust for disproportional partial year enrollment by issuer. At this time, we are not adding the partial year adjustment factors for the child and infant models due to limitations on using the MarketScan® data, as a few commenters pointed out. However, we intend to further study the issue.

Comment: Commenters noted HHS should further analyze the partial year enrollees' risk differences. Most commenters supported using a hybrid model in the future that identifies HCCs most likely affected by partial year adjustment, separately for individual and small group market plans, and make partial year adjustments accordingly. One commenter supported separate models by duration cohorts (1–4 months, 5–8 months, 9–12 months), which would provide a sufficient level of accuracy when coupled with the administrative complexity of incorporating this into the model. A few commenters noted that HHS should not change the model type until a detailed analysis of results from the partial year adjustment incorporation is conducted, and that issuers should be provided adequate time to understand the effect of this and other adjustments proposed prior to making additional changes.

Response: We will continue to assess different techniques for estimating the risk of partial year enrollees in the future. We are moving forward with the adjustment as proposed, and may propose different approaches once better data becomes available.

ii. Prescription Drug Hybrid Model

As discussed in the White Paper, HHS has been considering whether to incorporate prescription drug utilization indicators into the HHS risk adjustment model, beginning for the 2018 benefit year, to create a ''hybrid'' drug-diagnosis risk adjustment model. We are aware that there are advantages and disadvantages to including prescription drug utilization indicators in the HHS risk adjustment model, and sought comments on our proposal.

Many comments to the White Paper stated that drug information can effectively indicate health risk in cases where diagnoses may be missing. For example, diagnoses may be missing if clinicians fail to enter the condition on a patient's chart, or if there is stigma associated with certain health conditions that leads providers not to record these diagnoses on claims, or if the enrollee simply does not visit a physician during the term of his or her enrollment. However, even in these cases, prescriptions may be filled, providing information on health status.

Drug utilization patterns can also provide information on the severity of the illness. The hierarchical condition categories (HCCs) already capture information about illness severity from diagnoses, but drugs can potentially measure the severity of illness within a given HCC. A patient may receive first, second, or third lines of treatment involving different medications that indicate increasing levels of severity.

Additionally, commenters have noted that drug data can be available sooner and more easily than diagnoses from medical claims. In addition, commenters have noted that because prescription drug data is standardized, it is particularly useful for calibrating and measuring health risk because the prescription drug data will have less variability in coding.

Incorporating prescription drug utilization into the risk adjustment model will help reflect costs incurred by plans for medications for their enrollees in plans' risk scores.

Adding drug data to a diagnosis-based model also introduces operational complexities. Clinical indications for drugs can change quickly, which requires frequent updates to the model calibration and possibly to the therapeutic classification groupings as well. Because the model is calibrated before the start of the benefit year, it may be difficult to assess all updates or upcoming utilization pattern changes. Additional data requirements increase the administrative burden associated with calibrating and applying the model. Issuers of risk adjustment covered plans would be required to report prescription drug utilization as well as diagnoses, and audit and verification of the reported data would be necessary.

We have also indicated our concern that incorporating prescription drug utilization in the model may provide an incentive to overprescribe medications. Drug models may be particularly susceptible to this sort of behavior when there are inexpensive drugs included in therapeutic classes that are statistically linked to high total medical expenditures; in these situations, a small cost to the insurance plan (reimbursement for the drug) can bring a relatively large increase in revenue through the risk adjustment program.

In analyzing our proposal to use drug data in the risk adjustment model, we sought to strike a reasonable balance between increasing predictive accuracy and reducing incentives for over-prescription. One way we sought to do so was by focusing on drugs for which guidelines on when they should be prescribed are clear. However, substantial uncertainty or disagreement across providers exists over the circumstances in which drugs should be prescribed.

In addition, incorporating drug utilization makes risk adjustment sensitive to variations in drug utilization patterns that exist for reasons other than enrollee health status. Health plans with lower prescribing rates, such as health plans primarily covering individuals in rural areas with low access to pharmacies, would incorrectly appear to have healthier populations, and would pay higher risk charges or receive lower risk payments. Other things being equal, drug utilization is expected to be lower in plans with higher cost sharing (such as bronze or silver plans) and with aggressive drug utilization management, such as prior authorization, step therapy, quantity limits, restrictive formularies, and more stringent requirements to qualify for coverage of expensive drugs.

Furthermore, the lack of clear, one-to-one associations between most drug classes and diagnoses makes development of a ''hybrid'' drug-diagnosis risk adjustment model that incorporates and integrates drug and diagnosis risk markers challenging.

Few drug classes are indicated for only one medical condition. Many drug classes are prescribed ''off label'' for indications that are not U.S. Food and Drug Administration (FDA)-approved. Utilization of such drug classes can have very different implications for health care expenditures depending on the reasons for which they are prescribed. Presence of a drug class may not discriminate between high and low cost enrollees if it is used for both high and low cost conditions. Some drug classes may be used both for diagnoses that have been included in the HHS–HCC model, as well as for diagnoses that have been intentionally excluded, making it problematic to maintain this distinction in a hybrid drug-diagnosis risk adjustment model. Specific drugs within a drug class may have varying indications; the utilization of such drug classes may not unambiguously indicate the presence of a specific diagnosis.

Acknowledging all of the above considerations, we indicated in the June 8, 2016, guidance noted above that we intended to propose to incorporate a

small number of prescription drug classes as predictors in the HHS risk adjustment methodology for the 2018 benefit year to impute missing diagnoses and to indicate severity of illness.[28] We proposed to incorporate a small number of prescription drugs in the risk adjustment model for the 2018 benefit year. We proposed this change to the model with substantial attention to the concerns presented above in determining which drug groups to include and exclude, and the proposed model type used for each drug-diagnosis pair. To ensure this change to the model does not inadvertently increase the perverse incentives described above, we will monitor and evaluate the impact of incorporating prescription drugs in the model on utilization patterns. Using the data that we are proposing to collect in § 153.610, in addition to other relevant data sources, we would seek to evaluate whether incorporation of drugs in the model affects the utilization of drugs included in the model. Based on our evaluation, we would add or remove drug diagnosis pairs to or from the model for future benefit years through rulemaking.

To develop hybrid drug-diagnosis risk adjustment models, we need a reasonable number of clinically and empirically cohesive drug classes. We created several Prescription Drug Categories (RXCs) to select and group the drugs to be included in a hybrid diagnoses-and-drugs risk adjustment model.

Each prescription drug is assigned a National Drug Code (NDC) maintained by the FDA. There are over 190,000 NDCs, which include prescription drugs as well as over-the-counter medications. NDC codes are reported in prescription drug claims data. Due to the large number of individual NDCs, it is necessary to use a therapeutic classification system that classifies individual NDCs into aggregated categories of related drugs used for similar therapeutic purposes, or having similar pharmacological properties.

In the White Paper, we had initially based the RXCs on the American Hospital Formulary Service Pharmacologic-Therapeutic Classification©, which is published by the Board of the American Society of Health-System Pharmacists®. We chose at that point to use the American Hospital Formulary Service classification because it is widely used, widely available, comprehensive, and regularly updated. Because the American Hospital Formulary Service classification and mappings from NDCs are proprietary, however, we determined that using the United States Pharmacopeia (USP) classification would be better suited for use with HHS risk adjustment to maintain consistency with the EHB requirements and for public access and transparency. The USP classification also provides chemical ingredient level identifications for drug classifications; that is, unlike the American Hospital Formulary Service, USP includes comparable levels of detail to identify and group drugs used for only one diagnosis with other drugs used for multiple diagnosis codes. NDC codes are classified into 153 USP therapeutic classes. Drawing on the principles and criteria described below, we selected appropriate USP therapeutic classes and combined and edited those classes in order to create ''payment'' RXCs, each of which is closely associated with a specific HCC or group of HCCs that are potentially suitable for inclusion in the HHS risk adjustment model. Most USP classes are somewhat heterogeneous. To designate a class of drugs to serve as an indicator that a medical diagnosis is present, we needed to comprehensively review the drugs in each USP class to select only those that are closely associated with the diagnosis.

The development of a hybrid HHS-HCC risk adjustment model requires selecting drug-diagnosis pairs (RXC-HCC pairs) to include in the model. Similar to our approach in the 2014 Payment Notice when initially determining the HCCs to be included in the HHS risk adjustment models, we used a set of principles to guide our decision making. Development of the RXC-HCC pairs was an iterative process that required recurring consultations with a panel of clinicians.

Principle 1—RXC categories should be clinically meaningful. Each RXC is composed of a set of NDCs. These codes should all relate to a reasonably well-specified pharmacologic, therapeutic or chemical characteristic that defines the category. RXCs must be sufficiently clinically specific to minimize opportunities for discretionary coding. Clinical meaningfulness improves the face validity of the classification system to clinicians and the model's interpretability.

Principle 2—RXCs should predict total medical and drug expenditures. NDCs in the same RXC should be reasonably homogeneous with respect to their effect on current year costs.

Principle 3—RXCs that will affect payments should have adequate sample sizes to permit accurate and stable estimates of expenditures. RXCs used in establishing payments should have adequate sample sizes in available datasets. For example, it is difficult to reliably determine the expected cost of extremely rare categories.

Principle 4—When creating an individual's clinical profile, hierarchies should be used to characterize the person's illness level within each RXC where appropriate, while the effects of unrelated prescriptions accumulate. Because each new medical event adds to an individual's total disease burden, unrelated prescriptions in different RXCs should increase predicted costs of care. However, the most severe manifestation of a given disease process principally defines its impact on costs. Therefore, related RXCs should be treated hierarchically, with those associated with more severe manifestations of a condition dominating (and eliminating the effect of) less serious ones.

Principle 5—Providers should not be penalized for prescribing additional NDCs (monotonicity). This principle has two consequences for modeling: (1) No RXC should carry a negative payment weight; and (2) an RXC that is higher-ranked in a drug hierarchy (causing lower-rank drugs in the same hierarchy to be excluded) should have at least as large a payment weight as lower-ranked RXCs in the same hierarchy.

Principle 6—The classification should assign NDCs to only one RXC (mutually exclusive classification). Because each NDC can map to more than one RXC, the classification should map NDCs to the primary RXC based on considerations such as route of administration, intended application of the product, ingredient list identifier, label, dosage form, and strength of the drug.

Principle 7—Discretionary and non-credible drug categories should be excluded from payment models. RXCs that are particularly subject to intentional or unintentional discretionary prescribing variation or inappropriate prescribing by health plans or providers, or that are not clinically or empirically credible as cost predictors, should not be included. Excluding these RXCs reduces the sensitivity of the model to prescribing variation, prescribing proliferation, and gaming.

We used clinical and statistical assessments to appropriately balance all seven principles. In designing the RXCs, principles 5 (monotonicity) and 6 (mutually exclusive classification), were generally followed. Clinical meaningfulness (principle 1) is often

[28] March 31, 2016, HHS-Operated Risk Adjustment Methodology Meeting Questions & Answers. June 8, 2016. Available at *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/RA-OnsiteQA-060816.pdf.*

best served by creating a very large number of detailed clinical groupings. However, a large number of groupings conflicts with adequate sample sizes for each category (principle 3). We approached the balancing of our principles by designing a drug classification system using empirical evidence on frequencies and predictive power; clinical judgment on relatedness, specificity, and severity of RXCs; and professional judgment on incentives and likely provider responses to the classification system. The RXC risk adjustment model balances these competing goals to achieve prescription drug-based classes for use in risk adjustment.

In addition to the set of principles described above, we carefully considered selection of high-cost drugs, to avoid overly reducing the incentives for issuers to strive for efficiency in prescription drug utilization. We also carefully considered selection of drugs in areas exhibiting a rapid rate of technological change, as a drug class that is associated with a specific, costly diagnosis in one year may no longer be commonly used for that condition the next, in which case the cost predictions based on previous years of data would be inaccurate.

Based on these considerations, we proposed a small number of drug-diagnosis pairs for the hybrid model. We selected RXCs to impute diagnoses and to indicate the severity of diagnoses otherwise indicated through medical coding. We worked with clinician consultants and staff clinicians to tailor the RXCs used for imputation based on their expertise in treatment patterns as well as statistical indicators such as positive predictive value. Clinicians also informed our determination of RXCs for use as severity-only indicators in the model. For the severity-only RXCs, the presence of a prescription in the drug class signals a more severe case of the related diagnosis, which is likely to incur greater medical expenditures relative to someone with the same diagnosis, but not the drug. Severity-only RXCs are not specified in the model to impute the associated diagnosis when an HCC is not present. We are limiting the number of prescription drug classes included as predictors to only those drug classes where the risk of unintended effects on provider prescribing behavior is low; as described above, we intend to monitor prescription drug utilization for unintended effects and may remove drug classes based on such evidence in future rulemaking. We are finalizing the hybrid drug-diagnosis model as proposed.

Comment: Many commenters supported the inclusion of prescription drugs into the HHS risk adjustment methodology as proposed, with numerous commenters stating that this change will help stabilize the individual and small group markets, protecting the financial solvency of health insurance issuers and helping to ensure a vibrant insurance marketplace that provides ample insurance options for consumers, while reducing the incentives for plans to discriminate against individuals with high-cost conditions or designing formularies that may discourage the use of prescription drugs that ultimately prevent costly complications. Commenters that supported the inclusion of prescription drug data noted that prescription drug data is often more readily available than medical claims data.

Response: We agree with commenters that the incorporation of prescription drug data will help stabilize the individual and small group markets, because the prescription drug data is standardized, and may help reduce the incentives for issuers to avoid making available treatments for high-cost conditions in their formularies.

Comment: Several commenters encouraged HHS to include prescription drug utilization in the HHS risk adjustment methodology beginning for the 2017 benefit year, instead of beginning for the 2018 benefit year as proposed, while two commenters requested that the changes proposed by HHS be implemented in 2016, and applied retroactively to 2014 and 2015.

Response: To promote market stabilization and transparency, we intend to implement the proposed drug classes in Table 1 into the adult risk adjustment models beginning with the 2018 benefit year. We believe that giving issuers the opportunity to build into their rates and benefit designs significant, structural changes to the model, such as predicting enrollees' expenditures based on prescription drug utilization, promotes premium stability because issuers will believe there is less need to raise rates to account for unanticipated changes to the risk adjustment methodology. As such, we will not recalibrate the 2016 or 2017 models to account for this major change, as rates for those benefit years have already been set by issuers who lacked sufficient notice and detail to have reasonably accounted for this change.

Comment: One commenter supported the use of prescription drug data to improve the risk adjustment model's accuracy, but noted that the use of such data should not increase the administrative burdens on physicians. Another commenter believed that the use of prescription drug information in the model would add administrative burden and complexity, as issuers will have to make substantial changes to the reporting and analytics that support the completeness and accuracy of this reporting. Commenters also stated that HHS would have a more complex model to update each year and to communicate to plans. Commenters requested that if any changes to issuers' EDGE data submissions are needed due to the inclusion of pharmacy data in the risk adjustment model, HHS inform issuers of any changes as early as possible, and well in advance of the 2018 plan year. Another commenter requested that HHS provide the necessary operational and technical guidance on specifications for submissions of drug claims and that HHS consider how the drug data can be properly safeguarded, publicly disclosing well in advance, and soliciting public comment on any plans to use drug claims for any purposes besides risk adjustment.

Response: HHS has required issuers to provide access to pharmacy claims via EDGE servers since the 2014 benefit year. We are not requiring the submission of additional pharmacy claims data elements; thus, there is no additional burden on issuers or physicians. The privacy and security safeguards described at § 153.340 continue to apply to all data collected through the EDGE server, including pharmacy data, which is collected under § 153.710. We note that, because pharmacy data is one component of the EDGE data collection, the pharmacy data will be masked and used in the same manner the EDGE data is used—that is, for risk adjustment model recalibration, analysis, and informing the AV Calculator methodology. Like all EDGE data elements collected, de-identified pharmacy data could also be included in any public use file with the same privacy protections as described in the section on risk adjustment issuer data requirements.

Comment: We received a recommendation that the risk adjustment models incorporate factors that may indirectly affect risk, such as utilization variation due to access to pharmacies or plans' cost-sharing structures.

Response: Access to prescription drugs, whether due to proximity to pharmacies or a plan's cost-sharing structure, is an area we are continuing to evaluate. As we noted in the White Paper, we understand that in some cases higher rates of prescription drug usage may reflect regional pricing and prescribing patterns in addition to

health status. We welcome additional recommendations regarding how we might capture utilization differences not reflective of health status in the model.

Comment: We received many comments in support of HHS evaluating the initial drug classes to determine if the inclusion of the drug classes improves the risk adjustment methodology's ability to account for more severe patient cases and to evaluate the potential for gaming. Commenters requested that HHS release the evaluation results publicly before proceeding with any additional actions to expand or modify the drug classes for inclusion in the risk adjustment model. As part of that evaluation, commenters recommended that HHS monitor the utilization and unit cost of drugs included in the model, and track and study prescription rates for the underlying NDCs in the RXCs chosen for inclusion in risk adjustment, including through studies and the use of EDGE data. Some commenters requested that HHS publish data on the percentage of enrollees with imputation RXCs that also received an HCC and vice versa. Another commenter recommended that HHS begin developing the criteria and metrics it will use to evaluate the hybrid model's performance to reassure stakeholders that the rigor in the consideration of options to include drug data will continue past the first year of implementation, suggesting analytics such as prescribing prevalence of included drugs before and after implementation, the predictive power of the RXC, drug trends for associated drugs, or evaluating the impact had HHS required a minimum days' supply. Two commenters requested that HHS implement levers in the event that RXCs are overcompensating plans. One commenter recommended that HHS carefully track NDCs associated with a RXC so that it includes all NDCs used during the benefit year, including those that expired or were changed. Some commenters expressed concern that incorporating prescription drug utilization more widely could make risk adjustment more susceptible to gaming, perverse incentives, and distorted prescribing patterns, such as policies that encourage providers to prescribe more costly drugs within a therapeutic class or to use prescription drug treatments rather than less-costly alternatives like behavioral modification. One commenter stated qualified support but cautioned that the success of the incorporation of prescription drugs in other countries' risk adjustment programs does not necessarily provide support for prescription drug use in risk adjustment more generally. Several commenters stated providers would not over-prescribe based on risk adjustment coefficients because there is no direct relationship between the compensation a provider receives from an issuer and the cost of the medication it prescribes.

Response: We agree with commenters who suggested HHS evaluate the initial drug classes to determine if the inclusion of the drug classes improves the risk adjustment methodology's ability to account for more severe patient cases and to evaluate the potential for gaming. We also appreciate the suggestions for the criteria we should use in monitoring prescribing behavior. As we noted in the White Paper, the potential for gaming or perverse incentives is a primary concern in creating models that use prescription drug data. Perverse incentives arise in any risk adjustment model in which utilization indicators (such as prescriptions) trigger additional payments. Treatment decisions may be influenced or distorted by financial considerations, and basing risk adjustment on drug utilization will tend to bias health plans towards drug rather than non-drug treatments, potentially reducing plans' incentives to tightly manage drug utilization. We agree with commenters that HHS must perform analysis to determine which drug classes (or individual drugs) are most susceptible to gaming, with a specific emphasis on the drug classes included in the HHS risk adjustment model for the 2018 benefit year. While we designed the drug classes included in the 2018 benefit year adult models to promote predictive accuracy and reduce susceptibility to gaming, it is not clear that drug utilization is less discretionary than other types of health utilization predictive of expenditures, such as hospitalizations for chronic conditions. We intend to make public our analysis of prescription drug utilization after 2018 EDGE data is available, comparing 2018 with previous years of EDGE data.

Comment: One commenter stated that HHS will not be able to determine through auditing pharmacy data whether the diagnosis that was imputed was in fact made, since clinical providers go to great lengths to ensure the accuracy of their documentation, but prescriptions generally do not include any clinical or diagnostic information, and as such, HHS should not employ a risk adjustment model that is based on data that cannot be adequately audited.

Response: HHS does not perform risk adjustment data validation audits with the intent of determining whether a clinician correctly diagnosed a patient. Rather, HHS ensures that enrollees' diagnoses on paid claims reflect the appropriately assigned HCCs and were diagnosed by a licensed clinician. Likewise, in validating pharmacy claims, we intend to validate factors such as whether the prescription was filled and paid by the issuer, and whether the appropriate RXC interaction was assigned. We understand commenters' concerns regarding prescription drug data and intend to closely monitor prescribing behavior in the 2018 benefit year.

Comment: One commenter expressed concern that the time lag in the data will not reflect the actual benefit year costs of high-cost treatments such as those for HIV or Hepatitis C.

Response: The data time lag for risk adjustment has been a persistent issue in reflecting accurate drug costs for the applicable benefit year, even prior to the incorporation of RXCs in the risk adjustment models. We have proposed potential solutions to mitigate this time lag, but commenters tend to prefer predictability in coefficients over more recent and more reflective data of the applicable benefit year. We note that, in an effort to reflect changing drug costs as accurately as possible on older data, we do trend drug costs from the MarketScan® data to the applicable benefit year by specialty drugs and traditional (branded and generic) drugs separately.

Comment: A few commenters strongly disagreed with HHS's rationale for using U.S. Pharmacopeia (USP) (in part to maintain consistency with the Essential Health Benefits standards). These commenters stated that using USP does not achieve HHS's stated purpose of assuring appropriate formulary breadth. A few commenters also expressed concern that the drug classes are limited to USP classifications developed for the Medicare Part D model, as not all classes of drugs are covered by Medicare, making the USP classifications an incomplete list of classes for the purposes of the private marketplace. One commenter stated plans are not incentivized to cover drugs that are not included in the USP categories. One commenter noted that the USP drug classes are updated infrequently. One commenter supported the use of the USP classification system, and recommended that HHS apply lessons learned from the use of prescription drug data in other risk adjustment programs. Several commenters requested that HHS provide the link to the USP drug classifications (and an extension of the comment period to evaluate once provided).

Response: We developed the current RXCs as analogues of certain therapeutic classes from the American Hospital Formulary Service system, which is not limited to Part D drugs. We were able to successfully crosswalk all of those original American Hospital Formulary Service classes for inclusion in the HHS risk adjustment model to the USP. In developing the drug classes included in the risk adjustment model, the RXCs are not comprehensive; they include select drug classes (and in some cases, specific drugs) that are closely associated with particular diagnoses. We use the USP classes as a guideline in defining the RXCs. For each RXC, we thoroughly investigated whether there should be additional drugs added to the class, or any drugs removed from the class. We defined each RXC as a collection of NDCs listed in the RxNorm database, which is a comprehensive database of drugs independent of Part D or other formularies.[29] We do not believe that drugs excluded from Part D represent a significant concern for coverage under the HHS risk adjustment models, as none of the excluded categories were under consideration for inclusion in the HHS risk adjustment models. We understand that USP is planning to introduce a new drug classification system designed to more broadly apply to all populations—not only to Part D beneficiaries—which we expect to be effective in early 2017 and revised annually.[30] We believe that using the USP drug classification as a starting point in developing the RXCs for inclusion in the risk adjustment model is the most transparent approach, as using the American Hospital Formulary Service as a proprietary categorization would have required additional contractual arrangements to provide the NDC mappings to those classes, which are not freely available to the public. We also note that HHS is already using the USP for other regulatory purposes.

Table 1 shows the list of RXC–HCC pairs that we are including in the initial hybrid model. Each pair is designated as either an imputation/severity or a severity-only relationship. For each pair, Table 1 shows the coefficient for the diagnosis (HCC), the drug utilization (RXC), and the interaction of the two.

The drug-diagnosis pairs can include more than one HCC. For example, the list includes a diabetes drug-diagnosis relationship that includes three HCCs (diabetes with acute complication, diabetes with chronic complication, and diabetes without complication) which are grouped together in the model estimation. This RXC can be interpreted as an indication that the enrollee should have a diagnosis of one of these three diabetes HCCs. In addition, an RXC can be linked in the model to more than one HCC, and vice-versa. For example, RXC 8 (Immune suppressants and immunomodulators) has an imputation/severity relationship with HCC 056 (Rheumatoid arthritis and specified autoimmune disorders), and also has a severity-only relationship with HCC 048 (Inflammatory bowel disease).

While ten of the RXC–HCC pairs have three levels of incremental predicted costs (diagnosis only, prescription drug only, both diagnosis and prescription drug), indicating that they can be used to impute a particular condition, the model also includes two RXC–HCC pairs that will be used for severity only—that is, they will predict incremental costs for enrollees with the diagnosis only, and with both the diagnosis and the prescription drug. There are no additional costs predicted for an enrollee taking the drug who lacks the associated diagnosis. Table 1 lists the RXC–HCC pairs we are finalizing to incorporate in the adult models for the 2018 benefit year. Table 3 incorporates the full set of HCCs and RXC–HCCs and their associated coefficients that we are finalizing to implement in the 2018 adult models.

TABLE 1—DRUG-DIAGNOSIS (RXC–HCC) PAIRS CHOSEN FOR THE HYBRID RISK ADJUSTMENT MODELS

RXC	RXC label	HCC	HCC label	Proposed RXC use
1	Hepatitis C Antivirals	037C, 036, 035, 034	Chronic Hepatitis C, Cirrhosis of Liver, End-Stage Liver Disease, and Liver Transplant Status/Complications.	imputation/severity.
2	HIV/AIDS Antivirals	001	HIV/AIDS	imputation/severity.
3	Antiarrhythmics	142	Specified Heart Arrhythmias	imputation/severity.
4	End Stage Renal Disease (ESRD) Phosphate Binders.	184, 183, 187, 188	End Stage Renal Disease, Kidney Transplant Status, Chronic Kidney Disease, Stage 5, Chronic Kidney Disease, Severe (Stage 4).	imputation/severity.
5	Anti-inflammatories for inflammatory bowel disease (IBD).	048, 041	Inflammatory Bowel Disease, Intestine Transplant Status/Complications.	imputation/severity.
6a	Anti-Diabetic Agents, Except Insulin and Metformin Only.	019, 020, 021, 018	Diabetes with Acute Complications, Diabetes with Chronic Complications, Diabetes without Complication, Pancreas Transplant Status/Complications.	imputation/severity.
6b	Insulin	019, 020, 021, 018	Diabetes with Acute Complications; Diabetes with Chronic Complications; Diabetes without Complication, Pancreas Transplant Status/Complications.	imputation/severity.
7	Multiple Sclerosis Agents	118	Multiple Sclerosis	imputation/severity.
8	Immune Suppressants and Immunomodulators.	056, 057, 048, 041	Rheumatoid Arthritis and Specified Autoimmune Disorders, Systemic Lupus Erythematosus and Other Autoimmune Disorders, Inflammatory Bowel Disease, Intestine Transplant Status/Complications.	imputation/severity.
9	Cystic Fibrosis Agents	159, 158	Cystic Fibrosis, Lung Transplant Status/Complications.	imputation/severity.
10	Ammonia Detoxicants	036, 035, 034	Cirrhosis of Liver, End-Stage Liver Disease, Liver Transplant Status/Complications.	severity-only.
11	Diuretics, Loop and Select Potassium-Sparing.	130, 129, 128	Congestive Heart Failure, Heart Transplant, Heart Assistive Device/Artificial Heart.	severity-only.

[29] RxNorm Database. *https://www.nlm.nih.gov/research/umls/rxnorm/.*

[30] USP Drug Classification. *http://www.usp.org/usp-healthcare-professionals/drug-classification.*

We are finalizing incorporating the RXC–HCC pairs—some of which are used to impute a diagnosis and calibrate the severity of the condition, and others of which are used only as an indication of severity—into the adult risk adjustment model, beginning in the 2018 benefit year. We intend to evaluate the effects of this change to determine whether to continue, broaden, or reduce this set of factors in the HHS risk adjustment models.

Comment: Several commenters supported the use of the hybrid model, stating that it will improve the accuracy of risk adjustment. Commenters stated that the hybrid model is a practical approach to risk adjustment and strikes a fair balance between the benefits of utilizing prescription drug data against the potential risks. One commenter believed that the imputation of conditions will help predict the risk of partial-year enrollees, including partial-year enrollees in the small group market due to non-calendar plan years, while the severity component will improve the model's predictive power and increase the model's ability to compensate adequately for high-cost conditions. We received a few comments suggesting that it may make the most sense for HHS to begin with an imputation-only approach in order to limit the potential for confusion on behalf of plans and providers and to avoid the complexity of the hybrid model that undercuts a key purpose of incorporating pharmacy data into risk adjustment, which is to help fill gaps in diagnoses. While one commenter supported the hybrid model, the commenter suggested HHS create a third relationship category for imputation-only, stating that it is not necessarily the case that prescription drug utilization that is indicative of a specific diagnosis is also reflective of the severity of the disease state. One comment expressed concern that this model may create a strong perverse incentive to overprescribe medications that are included in the risk adjustment model and should therefore be avoided. One commenter suggested that HHS ensure that the model take into account enrollees with multiple chronic diseases and put into place safeguards to prevent issuers from using the addition of drug interaction coefficients to penalize patients and providers. A few commenters suggested that HHS include drugs prescribed for multiple conditions, as excluding drugs with multiple indicators may bias the risk adjustment model in favor of high-cost medicines with very specific uses over well-established medicines that are effective across multiple conditions. Other commenters noted that the inclusion of drug utilization can reduce the model's predictive accuracy since some drugs can be prescribed for multiple conditions and drugs can have ''off-label'' uses. One commenter recommended that HHS modify its proposal so that a single prescription drug category (RXC) is paired to a single HCC, and focus on incorporating RXCs tied to drugs for which there is only one approved and widespread use. One commenter opposed the use of the presence of a prescription drug to impute diagnoses that are not otherwise contained in the medical record as the result of a clinical contact, as a clinical condition that requires ongoing medication also requires clinical visits to ensure complete, quality care of the patient and appropriate management of the condition. Several commenters requested that HHS describe the iterative process of building an enrollee's risk score when prescription drugs are included.

Response: We agree with commenters that the hybrid model presents a fair balance between allowing for the imputation of missing diagnoses, while ensuring that risk adjustment compensates issuers for high-cost treatments provided for serious conditions. To clarify, in the drug model we are implementing, three different predicted levels of incremental expenditures may be modeled: One for enrollees with the diagnosis only, one for enrollees with the prescription drug claim only, and a third level for people with both indicators. As we discussed in the White Paper, drugs associated with multiple conditions must be evaluated carefully. For example, disease-modifying antirheumatic drugs (RXC 8, DMARDs) are most commonly used for rheumatoid arthritis (HCC 56), and less commonly for inflammatory bowel disease (HCC 48). Most people taking DMARDs have a rheumatoid arthritis diagnosis, which might suggest the drug class can be used to impute missing rheumatoid arthritis diagnoses. However, some enrollees take DMARDs for inflammatory bowel disease and do not have rheumatoid arthritis, so it would be incorrect to always impute rheumatoid arthritis for users of DMARDs. In this model, we impute rheumatoid arthritis for people taking DMARDs only if no diagnosis of inflammatory bowel disease is present. However, for other drug classes indicated for multiple diagnoses where use of the drug is more evenly split among multiple diagnoses, adopting a similar approach is more challenging. We also ensured that an enrollee's risk score would never be reduced for recording the prescription and diagnosis by imposing constraints on the coefficient estimates. We agree with commenters that an example of the iterative process of building an enrollee's risk score under the hybrid model would be very helpful and have included an example below.

Comment: Several commenters supported the drug classes HHS proposed to incorporate into the HHS risk adjustment methodology and believe they are well-suited to indicate the severity of the associated illnesses. A few commenters commended HHS's decision to include prescription drugs cautiously and incrementally, with some supporting a collaborative approach to including or changing the drug classifications in the risk adjustment model. One commenter specifically supported the inclusion of insulin, while others recommended the exclusion of insulin or similarly low-cost drugs as severity indicators. One commenter supported the inclusion of cystic fibrosis drugs, noting that they are subject to practice guidelines and standards, including standards for prescription drug use, and are prescribed according to the genetic profile of the patient, which protects against overutilization. We received several comments in support of the proposed drug-diagnosis pair specifically related to ESRD phosphate binders, stating that it will help ensure more accurate identification of and payment to issuers for those ESRD patients. Some commenters recommended that the risk adjustment methodology account for HIV pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP) by using restrictions on the HIV RXC that were proposed in the White Paper; they indicated that this could be done for HIV by dividing the HIV RXC, imputing HIV if the prescription consists of typical ''HIV cocktails'' with four or more weeks of drug treatment, and for PrEP by using the other half of the HIV RXC, such as Truvada-only prescriptions. This would still impute a risk score, but one that is lower than HIV to reflect the lower cost of PrEP. Some additional commenters recommended that for PEP, HHS should not impute HIV if there were four or fewer weeks of prescriptions filled (with no diagnostic code for HIV). Several commenters supported full prescription drug incorporation in the risk adjustment model, but acknowledged the challenges of making large adjustments to the dataset without

inadvertently harming the integrity and predictive accuracy of the model. Commenters recommended the addition of other drug classes to the risk adjustment model, such as antidepressants, arthritic agents, and psoriatic disease treatments, while another recommended we evaluate whether or not to add these additional classes. Commenters requested HHS consider the inclusion of oncology drugs and diagnoses and cancer treatments for 2018, noting that treatment guidelines would protect against overutilization of these drugs. Another commenter supported the inclusion of cancer treatments and encouraged HHS to continue its work to improve the accuracy of risk adjustments by ensuring that the model includes both physician-administered and self-administered drugs. One commenter supported the use of RXCs, but suggested limiting the inclusion to only three RXCs (Hep C, HIV, Cystic Fibrosis), and at most 5 RXCs (Insulin, Multiple Sclerosis agents), and refraining from using drugs that aren't indicative of conditions, such as anti-inflammatory drugs, diuretics, and loop- and select-potassium sparring.

Response: The drug classes we proposed for inclusion in the risk adjustment model were carefully chosen, in many cases because of the strict treatment guidelines surrounding some drug classes that commenters noted, which protect against overutilization. We approached the tradeoffs involved in designing a drug classification system using empirical evidence on frequencies and predictive power; clinical judgment on relatedness, specificity, and severity of RXCs; and professional judgment on incentives and likely provider responses to the classification system. We believe the RXC risk adjustment model balances these competing goals to achieve a feasible, prescription drug-based risk adjustment payment system. Regarding the HIV RXC, we carefully considered the face validity of including treatments for a condition that would impute a condition that an enrollee did not actually have (in the case of HIV prophylaxis treatments) and determined that imputing a diagnosis for a preventive treatment would not be consistent with our modeling efforts. We will evaluate this set of drug classes to assess the modifications made to the model's predictive ability and the potential for gaming.

Comment: We received a request that we implement the 181 daily dosage minimum beginning in 2018, with exceptions for single-treatment drugs such as Sovaldi, as the most effective barrier to the gaming; if not in 2018, then the commenter recommended we begin with EDGE data for 2019.

Response: We are interested in evaluating the use of minimum days' supply requirements for some drugs in the risk adjustment model. At this time, we can analyze days' supply in MarketScan® data, but we do not have the data elements necessary to evaluate days' supply on EDGE data.

Comment: One commenter recommended that HHS provide issuers with a detailed draft model of how a hybrid drug-diagnosis model would work as soon as possible, giving issuers an opportunity to review, beta test, and provide comments, through the release of the risk adjustment software. One commenter requested additional information on the clinician consultants who provided technical expertise on the development of the RXCs. Another commenter requested additional information on how the coefficients were developed and how the principles were applied for the newly added drug classes.

Response: We expect to provide updated EDGE server software, as we have done for previous benefit years of the risk adjustment program, that will allow issuers to approximate enrollees' risk scores under the 2018 risk adjustment models. Our clinical consultants are clinicians with extensive experience in and knowledge of risk adjustment and health care payment policy related to pharmaceuticals and medicine.

Comment: Commenters requested that HHS provide further information about the specific drugs, identified by NDCs, that it has mapped into each RXC category, and share its analysis regarding the conditions for which these drugs may be used, and how it expects to maintain these categories and their linkage to particular conditions as additional indications are added to a drug, or off-label use for other conditions expands. Some commenters recommended that HHS release information related to the drug and RXC mapping through the annual rulemaking process for public comment. One commenter recommended updating the underlying drugs in the selected drug classes annually, including updating to include any new or non-USP drug classes as appropriate. One commenter recommended including arthritis in the risk adjustment methodology since nearly half of enrollees with arthritis have a comorbidity.

Response: We intend to publicly release a mapping of the specific drugs to the drug classes included in the 2018 adult risk adjustment models. We expect to update the mapping as prescription drug guidance and updates become available, similar to our public release of mapping of ICD–10 codes acceptable for risk adjustment and the corresponding HCCs, and our updates of acceptable service codes for risk adjustment.

iii. High-Cost Risk Pooling

The HHS risk adjustment model reflects the average cost for enrollees with a given set of demographic characteristics and diagnoses. Our experience with the 2014 benefit year risk adjustment demonstrated that the model may underpredict costs for extremely high-cost enrollees, since predicted plan liabilities reflect the average costs for enrollees with the set of demographic characteristics and diagnoses included in the model. As a consequence, even with our risk adjustment methodology in place, issuers may retain an incentive to engage in risk selection in order to avoid these very high-cost enrollees (called ''high-cost enrollees'' throughout this discussion). Recent research has shown that adjusting for high-cost enrollees in a risk adjustment model will aid the model's fit and predictive ability for the remaining risk population.[31] To mitigate any residual incentive for risk selection to avoid high-cost enrollees, and to ensure that the actuarial risk of a plan with high-cost enrollees is better reflected in the risk adjustment transfers to issuers with high actuarial risk, we proposed to alter the risk adjustment methodology.

We accordingly proposed to incorporate into our methodology a high-cost risk pool calculation. Under this proposal, beginning for the 2018 benefit year, we would first exclude a percentage of costs above a certain threshold level in the calculation of enrollee-level plan liability risk scores, so that risk adjustment factors would be calculated for risk associated with HCCs and RXCs excluding those extreme costs, because the average risk associated with HCCs and RXCs is better accounted for without inclusion of the high-cost enrollees. Second, to account for the issuers' costs associated with the high-cost enrollees, we proposed to apply an adjustment to the risk adjustment calculation for each issuer of a risk adjustment covered plan to account for a percentage of all high-cost enrollees' costs above the threshold. We proposed to set the threshold and

[31] Schillo, S., G. Lux, J. Wassem and F. Buchner (2016) ''High Cost Pool or High Cost Groups—How to Handle Highest Cost Cases in a Risk Adjustment Mechanism?'' Health Policy (120): 141–147.

percentage of costs at a level that would continue to incentivize issuers to control costs while aiding the risk prediction of the risk adjustment model. In the proposed rule, we proposed a threshold of $2 million for each enrollee, with an adjustment equal to 60 percent of costs above the threshold. Issuers with high-cost enrollee expenses above this threshold would receive an adjustment, reflected in their respective transfers, to account for the percentage of costs above the threshold. Using claims data submitted to the EDGE server by issuers of risk adjustment covered plans, HHS would calculate the total amount of paid claims costs for high-cost enrollees above the threshold. HHS would then calculate an adjustment as a percent of the issuer's total premiums in the respective market, which would be applied to the total transfer amount in that market, maintaining the balance of payments and charges within the risk adjustment program. We proposed a uniform percentage of premium adjustment across all States for the individual (including catastrophic and non-catastrophic plans and merged market plans) and small group markets for all issuers in the program.

To implement this adjustment, we proposed two high-cost risk pools that would be calculated across all States under the program: One for the individual market (including catastrophic, non-catastrophic, and merged market plans), and one for the small group market. The adjustment to the transfer formula described above would be made for all issuers of risk adjustment covered plans in the individual (including catastrophic and non-catastrophic plans and merged market plans) and small group markets in the program, across all States, based on total premiums in the respective market. HHS would calculate an adjustment against each such risk adjustment covered plan's risk adjustment charge or payment to implement the applicable pools. We proposed that if an issuer were to fail the data quality analysis for a risk adjustment transfer and was assessed a default charge under § 153.740(b) on that basis, we would perform additional data quality metrics to determine an issuer's eligibility for high-cost risk pool adjustments.

We believe the inclusion of this policy, in combination with the rest of our methodology, will allow us to better assess total actuarial risk for each risk adjustment eligible plan, and thereby to ensure that the program is appropriately compensating issuers. We are finalizing a threshold of $1 million and coinsurance rate of 60 percent, and expect total adjustments as a result of this policy nationally to be very small as a percent of premiums (less than one half of one percent of total premiums for either market). We believe this modified methodology will improve the measurement of actuarial risk within States, and we will implement it, consistent with the statute, to help ensure that transfers within each State from low actuarial risk plans to high actuarial risk plans better reflect the actuarial risk of risk adjustment covered plans in a market. We intend to monitor the results of the program as it is implemented to ensure that the program as a whole and balance of payments operate as intended. We anticipate that applying this adjustment will mitigate the need for issuers to build risk premiums into their rates to account for these cases, by giving issuers greater predictability on expenditures.

Comment: Some commenters supported the proposal as a way to incentivize plans to cover individuals in rural areas and with high-cost diseases. Some commenters did not support this proposal, stating they believe it offers little benefit beyond what issuers receive from commercial reinsurance.

Response: We believe that excluding a portion of very high-cost risk enrollees' costs from the risk adjustment model calibration would improve the model's predictive ability. As we noted in the proposed rule, we expect total adjustments as a result of this policy nationally to be very small as a percent of premiums. We also believe this policy will further mitigate issuers' incentive to seek to avoid these high-cost enrollees and to build risk premiums into their rates.

Comment: Commenters expressed concerns about the potential for issuers to ''game'' this policy by shifting costs to the risk adjustment program, and not pay sufficient attention to cost containment for costs above the threshold. Commenters also noted that issuers may not have adequate data to price for this program, and could allow providers of high-cost conditions, such as burn centers, to charge extremely high prices. Commenters stated that while increasing the threshold could mitigate some gaming risk, where the provider and the issuer are the same entity, this adjustment would reward less efficient issuers, and would pose additional administrative burden that outweighs the benefits, including audits.

Response: These high-cost enrollee pool adjustments will be subject to HHS's audit authority under § 153.620. We believe that issuers will find it easier to price for the cost of the policy given the low percentage of premium to be charged across all States than it would be to price for the very high costs of these enrollees, if an issuer were to enroll them. We will seek to implement our audits of this policy in a manner that minimizes administrative burden, to the extent practicable. We also believe that the reduced final percentage of costs covered above the threshold of 60 percent, compared to the 80 percent coinsurance rate that was discussed in the White Paper, should continue to incentivize issuers to contain costs, while a lower threshold of $1 million could ensure that more issuers benefit from this provision, by covering more high-cost enrollees.

Comment: Comments ranged widely on the threshold level and the coinsurance rate. Some commenters supported the proposed threshold and coinsurance rate in mitigating gaming risk. One commenter noted that a lower threshold and higher coinsurance would be more effective in reducing risk premiums for these high-cost cases, and recommended a lower threshold of $500,000. Other commenters supported a lower threshold to make the results meaningful. A few commenters specifically preferred parameters closer to the example threshold and coinsurance rate discussed in the White Paper of $1 million and 90 percent.

Response: We are sensitive to these commenters' concerns, particularly in the first year of this policy in the risk adjustment methodology. We believe the inordinately high costs for certain high risk enrollees reflect random risk selection for certain issuers. We had proposed a $2 million threshold, with 60 percent of an enrollee's costs above the threshold covered by the pool. To help mitigate concerns raised, while still helping protect issuers from the unpredictable risk of exceptionally high costs, we are finalizing a lower threshold of $1 million, but maintain a coinsurance rate of 60 percent of costs above the threshold covered by the pool. The 60 percent coinsurance rate will ensure that issuers continue to contain costs, while the $1 million threshold will ensure that more high-cost enrollees are covered by the pool, benefiting more issuers and a greater portion of these costs. We also note that beginning with the 2018 benefit year recalibration, we will incorporate these parameters in our recalibration of the model by truncating 40 percent of costs above $1 million in our dataset used to simulate plan liability. Doing so will produce more predictive coefficients that reflect the impact of the high-cost enrollee pool.

Comment: A few commenters supported the proposal but without a national risk pool. Some commenters were also concerned about the cost variations across States and resulting cross-State subsidization, while other commenters supported the national pool as it spreads the risk and is a very small percent of premiums. Some commenters recommended that the costs across States be standardized, or that HHS re-price the costs based on Medicare Fee Schedule for price variations across States and adjust for differences in plan design and networks. One commenter suggested that the proposed multi-State concept would destabilize some insurance markets and contradicts the Affordable Care Act's intention to have the risk adjustment, reinsurance, and risk corridors programs be State-based.

Response: Consistent with the statute, the HHS risk adjustment methodology compares the actuarial risk of plans within a market within a State. As we discuss above, our continuing analysis of our models leads us to believe that the risk adjustment methodology as currently constructed may not account for outlier high-cost enrollees precisely, and may result in slightly overcompensated HCCs for most enrollees, and undercompensated HCCs for enrollees with high costs. Within certain HCCs, some enrollees appear to have particularly high costs. Including outlier costs in the estimation of these HCCs appears to undercompensate for such high-cost risk. To address this issue, the adjustment we proposed will help ensure that these very high-cost enrollee outliers are incorporated into CMS's modeling in a way that more precisely captures the actuarial risk of the plan. As we noted earlier in this final rule, beginning with the 2018 benefit year recalibration, we will incorporate these parameters in our recalibration of the model by truncating 40 percent of costs above $1 million in our dataset used to simulate plan liability. Implementing this proposal will produce more predictive coefficients that reflect the impact of the high-cost enrollee pool. The resulting improvement in the models' coefficients from incorporating the high-cost enrollee pool into the risk adjustment modeling ensures that risk scores for all enrollees will better reflect actuarial risk.

The high-cost risk pool calculation will function as an adjustment to benefit the modeling accuracy of actuarial risk within a market within a State in order to help calculate risk adjustment transfer amounts between low actuarial risk plans, on the one hand, and high actuarial risk plans, on the other hand, consistent with the statute. The Secretary has broad discretion under the statute to implement the risk adjustment program, and we note that other risk adjustment programs, such as the risk adjustment model used in the Netherlands,[32] have incorporated similar approaches.

We are not making any adjustments to address cross-State pricing variations at this time.

Comment: One commenter did not support this proposal, noting that HHS has interpreted actuarial risk under section 1343 of the Affordable Care Act as whether a plan has very high-cost enrollees. The commenter stated that HHS should not include factors actuaries may have considered in setting premium rates as these likely do not increase an enrollee's actuarial risk compared to average actuarial risk.

Response: The risk adjustment program intends to minimize the risk of greater than average adverse selection of enrollees into certain plans by leveling the playing field for issuers with transfers from issuers with healthier enrollees to issuers with sicker enrollees. The model is based on enrollees' observable health characteristics to provide an estimate of an enrollee's actuarial risk and determine whether a plan enrolled healthier or sicker enrollees compared to the average within a market within a State. We believe that accounting in this manner for the very highest and most unpredictable costs will strengthen the risk adjustment model's predictive ability for the actuarial risk of enrollees based on their age, sex and diagnostic information. The inclusion of this adjustment, in combination with the transfers attributable to the plan liability risk scores, will allow us to better assess total actuarial risk for each risk adjustment covered plan, and thereby ensure that risk adjustment is appropriately compensating issuers. Addressing very high costs in this manner will strengthen the prediction of relative costs associated with enrollees. The model will more efficiently be calibrated based on relative weights for demographic factors, HCCs and RXCs.

Comment: Many commenters supported including the national uniform adjustment calculated as a percent of premium and not capping costs at a certain amount. Commenters also recommended that HHS evaluate the impact of the adjustment to the model. One commenter suggested a fixed charge on issuers to be assessed with a cap on payments and the fixed charge published in rulemaking to provide issuers certainty. Some commenters wanted clarification on whether the adjustment would be funded through a charge, and inquired how risk adjustment would remain budget neutral, and supported the risk pool through a broad based fund instead of the risk adjustment user fee.

Response: We are finalizing these aspects of the adjustment to the risk adjustment transfers as proposed. The adjustment will be assessed as a percent of the applicable issuer's total premiums in the respective market, which will be applied to the total transfer amount in that market and will maintain the balance of payments and charges within the risk adjustment program. Based on MarketScan® data analysis, we believe the $1 million threshold and 60 percent coinsurance rate we are finalizing for the high-cost risk pool will be less than 0.5 percent of premiums. Given the small impact of this adjustment, we do not believe this will create significant additional uncertainty for issuers overall.

iv. Other Considerations

We had previously reported that based on the commercial MarketScan® data, the HHS risk adjustment models slightly underpredict risk for low-cost enrollees, and slightly overpredict risk for enrollees with high expenditures.[33] We have received feedback that HHS should adjust the risk adjustment models for the underprediction of risk for low-cost enrollees, and the overprediction of risk for enrollees with high expenditures, which affects the plan liability risk scores of plans that enroll more healthy individuals or plans that enroll more individuals with the most extreme chronic health conditions. We sought comment on approaches to address this issue. We will not implement any of these approaches for 2018, but will consider changes in future years.

More specifically, we have considered the use of a constrained regression approach, under which we would estimate the adult risk adjustment model using only the age-sex variables. We would then re-estimate the model using the full set of HCCs, while constraining the value of the age-sex

[32] Van Kleef, R. C. and R. van Vliet (2012), ''Improving Risk Equalization Using Multiple-Year High Cost as a Health Indicator,'' Medical Care 50(2): 140–144.

[32] Schillo, S., G. Lux, J. Wassem and F. Buchner (2016) ''High Cost Pool or High Cost Groups—How to Handle Highest Cost Cases in a Risk Adjustment Mechanism?'' Health Policy (120): 141–147.

[33] The HHS–HCC Risk Adjustment Model for Individual and Small Group Markets under the Affordable Care Act. 2014. Available at *https://www.cms.gov/mmrr/Downloads/MMRR2014_004_03_a03.pdf.*

coefficients to be the same as those from the first estimation. We believe that this two-step estimation approach would result in age-sex coefficients of greater magnitude, potentially helping us predict the risk of the healthiest subpopulations more accurately. Similarly, we considered approaches in which our first estimation of the model would include additional independent variables intended to account for potential non-linearities in risk for the highest-risk subpopulations, and then removing those additional variables in the second estimation. We considered creating separate models for enrollees with and without HCCs to derive two separate sets of age-sex coefficients. We believe such an approach could also help improve the models' predictive ratios for the healthiest subpopulations, though this model would have a separate set of age-sex coefficients for enrollees with no HCCs and enrollees with HCCs. Finally, we evaluated an approach in which we would directly adjust plan liability risk scores outside of the model for these subpopulations. For example, we could make an adjustment to the plan liability risk scores calculated through the HHS risk adjustment models that would adjust for such an underprediction or overprediction in actuarial risk by directly increasing low plan liability risk scores and directly reducing high plan liability risk scores in order to better match the relative risks of these subpopulations. We noted that while we believe modifications of this type could improve the model's performance along this specific dimension, there is a risk that such modifications could unintentionally worsen model performance along other dimensions on which the model currently performs well. We evaluated the effect of these types of modifications on all aspects of the model's performance before choosing to implement such an approach, and stated that we would not implement these types of modifications if we determined that doing so would have material unintended consequences for the model's performance along other dimensions.

Comment: Commenters generally supported addressing the underprediction of healthy and low-cost enrollees given that approximately 80 percent of enrollees in the MarketScan® sample do not have HCCs. Commenters stated that this revision to the modeling would mitigate risk selection to avoid low-cost enrollees, and that this could result in slightly lower premiums for all enrollees. Commenters noted that the existing risk adjustment methodology results in insufficient revenue from healthy enrollees to fund costs after risk adjustment charges, coupled with overcompensation of issuers that have enrollees with moderate health conditions, and requested that HHS address this imbalance to promote sustainable individual and small group markets, through increasing enrollment among healthy enrollees. Other commenters noted that HHS should ensure adequate risk adjustment compensation for high-cost enrollees, stating that the lowest priced issuers attract low-risk enrollees, and that attracting enrollment by high risk enrollees is far more complicated and involves taking on a substantial amount of risk, which is not fully accounted for through risk adjustment. A few commenters noted that the estimation bias among children is greater than with the adult model, and recommended that HHS also adjust the child model.

Some commenters did not support any adjustments. One commenter noted that such changes are unnecessary because carriers rate based on the full market and so slight overprediction of high-cost enrollees and slight underprediction of low-cost enrollees in the model calibration allows for accurate cost alignment once the impact of new technologies is considered, and that HHS's changes over the years to add preventive services, an adjustment for partial year enrollment, and prescription drug data should be adequate. Another commenter did not believe they had enough detail to provide sufficient comment on the proposed policy.

Commenters generally supported a two-step constrained approach to separately predict age-sex coefficients for enrollees without HCCs stating this approach is more likely to provide year-to-year stability, and better explains cost differences related to demographic factors. One commenter cautioned that there may be some interplay in effects between enrollees without HCCs and partial year adjustment factors. Another commenter supported a two-step approach noting that this would allow for separate estimations for partial year enrollees. Most commenters did not support an adjustment outside the model. One commenter suggested HHS consider other alternative models, such as the DxCG or Milliman MARA models, stating that these models have a higher predictive power and may help improve the accuracy of the risk adjustment models' predictive ratios. A few commenters also suggested that bronze plans are also specifically disadvantaged by the existing risk adjustment model, and that HHS should adjust the model for this issue.

A few commenters requested additional detail, with one commenter requesting the most recent model's predictive ratios and another requesting comparative results for all options considered. Some commenters supported further study on this issue and suggested that HHS seek to implement this policy for the 2019 risk adjustment model. A few commenters stated that this adjustment should be implemented prior to the 2018 benefit year, including retroactively for the 2014 and 2015 benefit years. One commenter requested that HHS provide the data driving the policy changes, and cautioned against making changes to the risk adjustment model based on requests from certain groups that had unfavorable results in the risk adjustment program, and that HHS should always aim to improve the model's accuracy.

Response: We believe that some of the modeling approaches we considered could improve the model's predictive ability for certain subgroups of enrollees. However, we are still evaluating the tradeoffs that would need to be made in model predictive power among subgroups of enrollees. We continue to focus on encouraging plans to attract high-risk enrollees through the risk adjustment model, but agree with commenters that we should further evaluate solutions prior to making any adjustments to the model. We will continue to explore these modeling approaches and look forward to comparing our results with the EDGE enrollee-level data collection, which we are also finalizing in this rule.

In addition, we noted in the proposed rule the feedback we have received regarding our transfer methodology in community-rated States. In the 2014 Payment Notice, we stated that billable members exclude children who do not count toward family rates. In the second Program Integrity Rule, we clarified the modification to the transfer formula to accommodate community-rated States that utilize family tiering rating factors. In the case of family tiering States, billable members are based on the number of children that implicitly count toward the premium under a State's family rating factors. We have received feedback that there may be alternative methodologies for calculating billable member months in family tiering States, such as by adjusting for the expected actual number of members on the policy, not the number of members that implicitly count toward the premium. We sought comment on whether our methodology for calculating billable

member months in family tiering States should be altered, and how. Based on comments received, we are not making any changes to the transfer methodology with respect to billable member months at this time.

Comment: Most commenters did not support a change to the transfer methodology with respect to community-rated States because changes in risk scores and allowable rating factors would be offset by changes in the State average premium and billable member counts. Commenters noted our statement in the White Paper that this design allows for incorporating the additional risk for non-billed members leading to higher Statewide average premium, which gets cancelled out because transfers are also multiplied by billable member months. A few other commenters supported such an adjustment, noting that using billable member months inflates risk and transfers.

Response: We believe that our current methodology in community-rated States is consistent with using enrollment that contributed toward premiums for risk adjustment calculations. If we were to use a method that calculated average risk including non-billed members, it would lower risk scores, but would understate transfers, because those transfers would not account for the risk of the non-billed members. We are not making any changes to the transfer methodology with respect to billable member months at this time.

v. Data Timing for Risk Adjustment Recalibrations

We have used the three most recent years of MarketScan® data to recalibrate the 2016 and 2017 benefit year risk adjustment models. This approach has allowed for using the blended, or averaged, coefficients from 3 years of separately solved models, which promotes stability for the risk adjustment coefficients year to year, particularly for conditions with small sample sizes. This approach in previous years has also required that we finalize coefficients based on data that does not become available until after the publication of the proposed payment notice. We received several comments to the proposed 2017 Payment Notice requesting that the payment notice schedule be moved up to accommodate substantive comments and to permit issuers more time between the publication of the payment notice and the commencement of issuers' certification activities. In order to accommodate commenters' request for an earlier payment notice schedule, we would not be able to incorporate an additional recent year of data. We also received many comments on how to best address the data lag for HHS risk adjustment and better reflect new treatments that may be associated with high-cost conditions. We had discussed in the White Paper the use of only 2014 MarketScan® data for the 2018 benefit year recalibration; using blended, 3-year data coefficients would mitigate any introductions of new costs for particular conditions by 2 years of older data. However, commenters to the White Paper supported continuing to use a 3-year blend for 2018 benefit year recalibration. We proposed to continue to use the 3-year blend for 2018 benefit year recalibration.

We noted at our risk adjustment conference on March 31, 2016, that we were considering releasing updated final coefficients using more recent data after the risk adjustment methodology for the corresponding benefit year has been finalized in the applicable annual payment notice, given the potentially earlier timing of the 2018 Notice of Benefit and Payment Parameters. We proposed to amend our regulations at § 153.320(b)(1)(i) to allow for HHS to provide draft coefficients in an annual payment notice, as well as the intended datasets to be used to calculate final coefficients and the date by which the final coefficients will be released in guidance. In the proposed rule, we stated that we were considering using 2015, 2016, and 2017 MarketScan® data for 2018 risk adjustment, publishing the final, blended coefficients in the early spring of 2019, prior to final 2018 benefit year risk adjustment calculations. We have previously finalized an applicable benefit year's risk adjustment methodology, including the final coefficients, prior to rate setting and benefits being provided to members for the applicable benefit year. We sought comment on this proposal.

We also sought comment on the timing of the publication of the final coefficients, providing a few options to reduce the data lag as much as possible. In the first option, we stated in the proposed rule that we could release final coefficients for the 2018 benefit year risk adjustment model in the spring of 2017 that would reflect the incorporation of 2015 MarketScan® data, after it becomes available, blended with 2013 and 2014 MarketScan® data. Alternatively, we stated we could release final coefficients for the 2018 benefit year risk adjustment model in the spring of 2019, prior to the April 30, 2019, data submission deadline for the 2018 benefit year, which would reflect 2015, 2016, and 2017 blended MarketScan® data. We stated we could also provide interim coefficients in the spring of 2018 using 2014, 2015, and 2016 blended MarketScan® data, in addition to the interim coefficients that would be published in the 2018 Payment Notice final rule using 2013 and 2014 data. As noted above, we would continue to finalize the risk adjustment methodology for the corresponding year through notice and comment in the applicable annual payment notice. In light of the comments received, we will use 2013, 2014, and 2015 MarketScan® data to calculate the risk adjustment coefficients for the 2018 benefit year, which we will release in guidance in the spring of 2017, in time for rate setting for the 2018 benefit year. We note again that a risk adjustment methodology remains in effect for future benefit years until changed in rulemaking (or, in the case of coefficients for a particular risk adjustment model, until changed in guidance).

We note that, in order to provide greater, earlier estimates to issuers regarding their risk adjustment transfers, we intend to continue providing interim estimated risk scores and risk adjustment transfers in the spring of the year after the applicable benefit year, as we did this past spring for the 2015 benefit year. We continue to explore other ways to provide earlier risk adjustment data to issuers.

Comment: Some commenters supported the use of the most recent MarketScan® data. One commenter stated that providing the most recent claims data to calculate coefficients would ensure the risk adjustment model takes into account changes in health care delivery and would prevent gaming by issuers that use risk adjustment factors to selectively target enrollees with certain conditions. Commenters stated that publishing final coefficients in 2019 would encourage issuers to attract a diverse mix of risk. One commenter noted that once actuaries adjust their rating practices and modeling, the results from the most recent data will improve the overall accuracy of the program and stability of the market. Another commenter supported inclusion of the most recent MarketScan® data, but only if there is still sufficient opportunity to comment on the development of the risk adjustment factors, and requested HHS find more current sources of utilization data. Another commenter supported the proposal contingent on whether the preliminary results released in the spring of 2019, are determined using the same published methodology, so that insurers have accurate risk adjustment data for pricing purposes.

However, many commenters strongly disagreed with any approach that prevents issuers from having final factors at the time of rate setting. The commenters noted that fewer unknowns during rate development far outweigh accuracy of new data, and that waiting even until spring of 2018 to finalize the model weights for plan year 2018 will force plans to determine rates with an additional uncertainty, and therefore is likely to result in higher rates. Changes to the risk adjustment coefficients released too late would preclude issuers from accurately reflecting risk adjustment in their pricing. Two commenters noted that a change in 2018 does not make sense if HHS is considering revising the data source for calibration for 2019.

One commenter requested that HHS run previous risk adjustment transfer results with the newly calibrated coefficients relative to the ones that were used to better enable issuers to understand the changes in the coefficients year over year and their effect on transfers.

Another commenter requested that HHS publish clear guidelines for when it will propose changes to the risk adjustment program outside of the formal rulemaking for that year. The ability to make changes outside of rulemaking would enable HHS to keep the risk adjustment program flexible and current, but also could lead to more uncertainty in the risk adjustment program and has the potential to lead to changes implemented before they have time to be properly vetted and assessed by affected parties.

One commenter requested that HHS publish final coefficients no later than February of the year before the benefit year (for example, publish final coefficients by February 2017 for the 2018 benefit year). One commenter also suggested that HHS give greater weight in the blended dataset to the most recent year's data.

One commenter stated that the 3-year blended coefficients do not reflect the current cost of prescription drugs. Another commenter stated that while the most recent data would improve the model's accuracy, the extent of such improvement is not clear. The commenter also noted that a one-year change on top of already significant changes to the risk adjustment model could create even more uncertainty.

Response: We recognize that many commenters prefer predictability over using the most recent data so that they will be able to use the precise risk adjustment model coefficients in rate setting for the applicable benefit year. We are sensitive to the tradeoff of predictability and the reflection of most recent claims costs, which reflect the most recent patterns and costs of treatments. However, since risk adjustment estimates must be included in rate setting, we understand commenters' desire for stability in the final coefficients over recency (and, unpredictability). Therefore, HHS will release final risk adjustment coefficients in the spring of 2017 for the 2018 benefit year using blended 2013, 2014, and 2015 MarketScan® data. (4) List of factors to be employed in the model (§ 153.320)

For the 2018 benefit year, in addition to the RXCs we proposed to include in the adult risk adjustment model, we also proposed to separate the Chronic Hepatitis HCC into two new HCCs for Hepatitis C and Hepatitis A and B, in the adult, child, and infant models. This would increase the total HCCs in the HHS risk adjustment methodology from 127 to 128. Based on the comments received, we are finalizing this modification as proposed.

Comment: Most commenters supported this proposal. One commenter requested additional information on the data used to make the decision to separate the Hepatitis HCC, and how HHS intends to do this in the future.

Response: Beginning with the 2018 benefit year, we will separate the Chronic Hepatitis HCC into two new HCCs for Hepatitis C and Hepatitis A and B, in the adult, child, and infant models. We based this decision to separate the Hepatitis HCC on the varying risk for the Chronic Hepatitis types. HHS will continue to assess HCCs in light of new technologies and the risk implications for issuers.

The draft factors resulting from the blended factors from the 2013 and 2014 separately solved models (with the incorporation of partial year enrollment and prescription drugs reflected in the adult models only) are shown in the Tables 3, 5, and 6. The adult, child, and infant models have been truncated to account for the high-cost enrollee pool payment parameters ($1 million threshold, 60 percent coinsurance). Table 3 contains factors for each adult model, including the interactions.[34] Some interactions of RXCs and HCCs have negative coefficients; however, this does not mean that an enrollee's risk score decreases due to the presence of an RXC, an HCC, or both. For example, consider RXC_03 Antiarrythmics and HCC_142 Specified Heart Arrythmias, for a silver plan enrollee. If RXC_03 is first coded, the blended risk score increases by 2.167 (coefficient for RXC_03), and if HCC_142 is then coded, the blended risk score increases again by 1.866 + (−0.062) = 1.804 (coefficient for HCC_142 + coefficient for interaction of Rx_03 and HCC_142), for a combined increase of 2.167 + 1.804 = 3.971. Similarly, if HCC_142 is first coded, the blended risk score increases by 1.866 (coefficient for HCC_142), and if RXC_03 is then coded, the blended risk score increases again by 2.167 + (−0.062) = 2.105 (coefficient for RXC_03 + coefficient for interaction of RXC_03 and HCC_142), for a combined increase of 1.866 + 2.105 = 3.971.

Table 4 contains the HHS HCCs in the severity illness indicator variable. Table 5 contains the factors for each child model. Table 6 contains the factors for each infant model.

TABLE 2—FINAL ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2017 BENEFIT YEAR

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Demographic Factors					
Age 21–24, Male	0.199	0.148	0.092	0.056	0.055
Age 25–29, Male	0.189	0.137	0.080	0.043	0.043
Age 30–34, Male	0.245	0.180	0.107	0.059	0.059
Age 35–39, Male	0.312	0.234	0.147	0.089	0.088
Age 40–44, Male	0.391	0.301	0.199	0.130	0.129
Age 45–49, Male	0.471	0.369	0.253	0.174	0.173

[34] We note that the interaction factors are additive, and not hierarchical in nature—that is, an enrollee could have several, additive interactions.

TABLE 2—FINAL ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2017 BENEFIT YEAR—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Age 50–54, Male	0.611	0.492	0.355	0.260	0.258
Age 55–59, Male	0.701	0.567	0.414	0.306	0.304
Age 60–64, Male	0.810	0.654	0.478	0.349	0.347
Age 21–24, Female	0.339	0.262	0.171	0.111	0.110
Age 25–29, Female	0.399	0.308	0.203	0.132	0.130
Age 30–34, Female	0.539	0.428	0.305	0.224	0.222
Age 35–39, Female	0.633	0.513	0.380	0.294	0.292
Age 40–44, Female	0.713	0.579	0.433	0.336	0.335
Age 45–49, Female	0.724	0.585	0.432	0.327	0.325
Age 50–54, Female	0.821	0.671	0.501	0.382	0.379
Age 55–59, Female	0.829	0.672	0.495	0.367	0.364
Age 60–64, Female	0.876	0.706	0.513	0.372	0.370
Diagnosis Factors					
HIV/AIDS	8.943	8.450	8.099	8.142	8.143
Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock	10.685	10.510	10.404	10.460	10.461
Central Nervous System Infections, Except Viral Meningitis	6.636	6.535	6.470	6.491	6.492
Viral or Unspecified Meningitis	4.664	4.428	4.269	4.227	4.227
Opportunistic Infections	8.507	8.406	8.340	8.322	8.321
Metastatic Cancer	24.307	23.874	23.573	23.632	23.633
Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia	12.629	12.295	12.061	12.065	12.066
Non-Hodgkin's Lymphomas and Other Cancers and Tumors	5.852	5.617	5.440	5.393	5.392
Colorectal, Breast (Age < 50), Kidney, and Other Cancers	5.159	4.924	4.743	4.695	4.694
Breast (Age 50+) and Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors	2.965	2.792	2.655	2.602	2.601
Thyroid Cancer, Melanoma, Neurofibromatosis, and Other Cancers and Tumors	1.459	1.304	1.167	1.076	1.074
Pancreas Transplant Status/Complications	5.458	5.236	5.093	5.115	5.115
Diabetes with Acute Complications	1.192	1.053	0.929	0.825	0.824
Diabetes with Chronic Complications	1.192	1.053	0.929	0.825	0.824
Diabetes without Complication	1.192	1.053	0.929	0.825	0.824
Protein-Calorie Malnutrition	13.677	13.685	13.695	13.756	13.757
Mucopolysaccharidosis	2.285	2.165	2.066	2.013	2.013
Lipidoses and Glycogenosis	2.285	2.165	2.066	2.013	2.013
Amyloidosis, Porphyria, and Other Metabolic Disorders	2.285	2.165	2.066	2.013	2.013
Adrenal, Pituitary, and Other Significant Endocrine Disorders	2.285	2.165	2.066	2.013	2.013
Liver Transplant Status/Complications	16.044	15.870	15.760	15.773	15.773
End-Stage Liver Disease	7.110	6.870	6.712	6.730	6.731
Cirrhosis of Liver	3.856	3.694	3.572	3.538	3.537
Chronic Hepatitis	3.856	3.694	3.572	3.538	3.537
Acute Liver Failure/Disease, Including Neonatal Hepatitis	4.429	4.268	4.158	4.147	4.147
Intestine Transplant Status/Complications	32.610	32.560	32.521	32.564	32.563
Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis	11.825	11.566	11.387	11.416	11.417
Intestinal Obstruction	6.542	6.277	6.105	6.124	6.124
Chronic Pancreatitis	5.458	5.236	5.093	5.115	5.115
Acute Pancreatitis/Other Pancreatic Disorders and Intestinal Malabsorption	2.710	2.522	2.385	2.337	2.336
Inflammatory Bowel Disease	3.667	3.401	3.197	3.105	3.103
Necrotizing Fasciitis	6.581	6.382	6.243	6.258	6.258
Bone/Joint/Muscle Infections/Necrosis	6.581	6.382	6.243	6.258	6.258
Rheumatoid Arthritis and Specified Autoimmune Disorders	4.854	4.592	4.399	4.389	4.389
Systemic Lupus Erythematosus and Other Autoimmune Disorders	1.212	1.077	0.957	0.872	0.871
Osteogenesis Imperfecta and Other Osteodystrophies	3.126	2.927	2.766	2.706	2.705
Congenital/Developmental Skeletal and Connective Tissue Disorders	3.126	2.927	2.766	2.706	2.705
Cleft Lip/Cleft Palate	1.310	1.149	1.020	0.952	0.951
Hemophilia	46.447	46.159	45.940	45.946	45.947
Myelodysplastic Syndromes and Myelofibrosis	12.671	12.534	12.439	12.449	12.449
Aplastic Anemia	12.671	12.534	12.439	12.449	12.449
Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn	9.742	9.580	9.457	9.448	9.448
Sickle Cell Anemia (Hb-SS)	9.742	9.580	9.457	9.448	9.448
Thalassemia Major	9.742	9.580	9.457	9.448	9.448
Combined and Other Severe Immunodeficiencies	5.438	5.290	5.186	5.188	5.188

TABLE 2—FINAL ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2017 BENEFIT YEAR—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Disorders of the Immune Mechanism	5.438	5.290	5.186	5.188	5.188
Coagulation Defects and Other Specified Hematological Disorders	2.810	2.712	2.631	2.603	2.603
Drug Psychosis	3.832	3.576	3.381	3.288	3.286
Drug Dependence	3.832	3.576	3.381	3.288	3.286
Schizophrenia	3.196	2.940	2.749	2.685	2.684
Major Depressive and Bipolar Disorders	1.720	1.552	1.408	1.312	1.311
Reactive and Unspecified Psychosis, Delusional Disorders	1.720	1.552	1.408	1.312	1.311
Personality Disorders	1.190	1.054	0.920	0.823	0.822
Anorexia/Bulimia Nervosa	2.704	2.537	2.400	2.342	2.341
Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes	2.648	2.517	2.414	2.364	2.364
Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes	1.073	0.965	0.861	0.788	0.787
Autistic Disorder	1.190	1.054	0.920	0.823	0.822
Pervasive Developmental Disorders, Except Autistic Disorder	1.190	1.054	0.920	0.823	0.822
Traumatic Complete Lesion Cervical Spinal Cord	12.012	11.856	11.742	11.739	11.740
Quadriplegia	12.012	11.856	11.742	11.739	11.740
Traumatic Complete Lesion Dorsal Spinal Cord	9.161	9.003	8.889	8.877	8.877
Paraplegia	9.161	9.003	8.889	8.877	8.877
Spinal Cord Disorders/Injuries	5.641	5.430	5.278	5.249	5.249
Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease	3.027	2.790	2.623	2.583	2.583
Quadriplegic Cerebral Palsy	1.229	1.016	0.855	0.791	0.790
Cerebral Palsy, Except Quadriplegic	0.135	0.073	0.039	0.016	0.015
Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies	0.077	0.022	0.000	0.000	0.000
Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy	5.252	5.104	4.998	4.975	4.975
Muscular Dystrophy	2.150	1.984	1.862	1.787	1.786
Multiple Sclerosis	13.598	13.194	12.910	12.956	12.957
Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders	2.150	1.984	1.862	1.787	1.786
Seizure Disorders and Convulsions	1.503	1.344	1.213	1.143	1.142
Hydrocephalus	6.394	6.272	6.171	6.144	6.144
Non-Traumatic Coma, and Brain Compression/Anoxic Damage	9.200	9.064	8.958	8.953	8.952
Respirator Dependence/Tracheostomy Status	34.709	34.699	34.698	34.764	34.765
Respiratory Arrest	10.541	10.391	10.296	10.360	10.361
Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes	10.541	10.391	10.296	10.360	10.361
Heart Assistive Device/Artificial Heart	35.115	34.870	34.711	34.771	34.772
Heart Transplant	35.115	34.870	34.711	34.771	34.772
Congestive Heart Failure	3.281	3.173	3.096	3.090	3.090
Acute Myocardial Infarction	10.133	9.797	9.582	9.693	9.695
Unstable Angina and Other Acute Ischemic Heart Disease	5.231	4.955	4.782	4.796	4.797
Heart Infection/Inflammation, Except Rheumatic	6.303	6.168	6.068	6.046	6.046
Specified Heart Arrhythmias	2.834	2.685	2.569	2.515	2.515
Intracranial Hemorrhage	9.426	9.147	8.956	8.965	8.965
Ischemic or Unspecified Stroke	3.167	2.982	2.870	2.875	2.876
Cerebral Aneurysm and Arteriovenous Malformation	3.947	3.748	3.605	3.563	3.563
Hemiplegia/Hemiparesis	5.466	5.372	5.315	5.358	5.359
Monoplegia, Other Paralytic Syndromes	3.457	3.324	3.230	3.211	3.211
Atherosclerosis of the Extremities with Ulceration or Gangrene	10.936	10.837	10.782	10.850	10.852
Vascular Disease with Complications	7.731	7.546	7.419	7.419	7.420
Pulmonary Embolism and Deep Vein Thrombosis	3.845	3.678	3.558	3.531	3.531
Lung Transplant Status/Complications	36.420	36.228	36.104	36.181	36.182
Cystic Fibrosis	18.022	17.696	17.452	17.474	17.474
Chronic Obstructive Pulmonary Disease, Including Bronchiectasis	0.951	0.833	0.723	0.648	0.646
Asthma	0.951	0.833	0.723	0.648	0.646
Fibrosis of Lung and Other Lung Disorders	1.894	1.774	1.685	1.644	1.643
Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections	7.595	7.521	7.472	7.486	7.486
Kidney Transplant Status	10.187	9.922	9.747	9.738	9.738
End Stage Renal Disease	38.453	38.219	38.071	38.191	38.193
Chronic Kidney Disease, Stage 5	2.087	1.988	1.924	1.919	1.919
Chronic Kidney Disease, Severe (Stage 4)	2.087	1.988	1.924	1.919	1.919
Ectopic and Molar Pregnancy, Except with Renal Failure, Shock, or Embolism	1.357	1.170	0.991	0.806	0.803

TABLE 2—FINAL ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2017 BENEFIT YEAR—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Miscarriage with Complications	1.357	1.170	0.991	0.806	0.803
Miscarriage with No or Minor Complications	1.357	1.170	0.991	0.806	0.803
Completed Pregnancy with Major Complications	3.651	3.168	2.877	2.726	2.727
Completed Pregnancy with Complications	3.651	3.168	2.877	2.726	2.727
Completed Pregnancy with No or Minor Complications	3.651	3.168	2.877	2.726	2.727
Chronic Ulcer of Skin, Except Pressure	2.360	2.236	2.153	2.137	2.137
Hip Fractures and Pathological Vertebral or Humerus Fractures	9.462	9.246	9.102	9.137	9.138
Pathological Fractures, Except of Vertebrae, Hip, or Humerus	2.011	1.880	1.766	1.695	1.694
Stem Cell, Including Bone Marrow, Transplant Status/Complications	31.030	31.024	31.019	31.037	31.037
Artificial Openings for Feeding or Elimination	10.041	9.948	9.888	9.926	9.927
Amputation Status, Lower Limb/Amputation Complications	5.262	5.111	5.014	5.043	5.044
Interaction Factors					
Severe illness x Opportunistic Infections	10.392	10.618	10.787	10.882	10.884
Severe illness x Metastatic Cancer	10.392	10.618	10.787	10.882	10.884
Severe illness x Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia	10.392	10.618	10.787	10.882	10.884
Severe illness x Non-Hodgkin's Lymphomas and Other Cancers and Tumors	10.392	10.618	10.787	10.882	10.884
Severe illness x Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy	10.392	10.618	10.787	10.882	10.884
Severe illness x Heart Infection/Inflammation, Except Rheumatic	10.392	10.618	10.787	10.882	10.884
Severe illness x Intracranial Hemorrhage	10.392	10.618	10.787	10.882	10.884
Severe illness x HCC group G06 (G06 is HCC Group 6 which includes the following HCCs in the blood disease category: 67, 68)	10.392	10.618	10.787	10.882	10.884
Severe illness x HCC group G08 (G08 is HCC Group 8 which includes the following HCCs in the blood disease category: 73, 74)	10.392	10.618	10.787	10.882	10.884
Severe illness x End-Stage Liver Disease	1.899	2.034	2.136	2.220	2.221
Severe illness x Acute Liver Failure/Disease, Including Neonatal Hepatitis	1.899	2.034	2.136	2.220	2.221
Severe illness x Atherosclerosis of the Extremities with Ulceration or Gangrene	1.899	2.034	2.136	2.220	2.221
Severe illness x Vascular Disease with Complications	1.899	2.034	2.136	2.220	2.221
Severe illness x Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections	1.899	2.034	2.136	2.220	2.221
Severe illness x Artificial Openings for Feeding or Elimination	1.899	2.034	2.136	2.220	2.221
Severe illness x HCC group G03 (G03 is HCC Group 3 which includes the following HCCs in the musculoskeletal disease category: 54, 55)	1.899	2.034	2.136	2.220	2.221
Enrollment Duration Factors					
One month of enrollment	0.515	0.441	0.396	0.386	0.386
Two months of enrollment	0.454	0.381	0.329	0.318	0.318
Three months of enrollment	0.387	0.321	0.270	0.258	0.258
Four months of enrollment	0.316	0.264	0.221	0.211	0.211
Five months of enrollment	0.273	0.228	0.188	0.176	0.176
Six months of enrollment	0.248	0.208	0.170	0.156	0.156
Seven months of enrollment	0.217	0.186	0.155	0.145	0.144
Eight months of enrollment	0.166	0.142	0.118	0.110	0.109
Nine months of enrollment	0.114	0.103	0.092	0.089	0.089
Ten months of enrollment	0.114	0.103	0.092	0.089	0.089
Eleven months of enrollment	0.100	0.092	0.084	0.082	0.082

TABLE 3—DRAFT ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2018 BENEFIT YEAR

HCC or RXC No.	Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Demographic Factors						
	Age 21–24, Male	0.177	0.139	0.094	0.052	0.045
	Age 25–29, Male	0.161	0.123	0.079	0.035	0.028

TABLE 3—DRAFT ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2018 BENEFIT YEAR—Continued

HCC or RXC No.	Factor	Platinum	Gold	Silver	Bronze	Catastrophic
	Age 30–34, Male	0.208	0.160	0.104	0.049	0.040
	Age 35–39, Male	0.272	0.214	0.147	0.080	0.068
	Age 40–44, Male	0.340	0.273	0.195	0.116	0.102
	Age 45–49, Male	0.413	0.337	0.249	0.158	0.142
	Age 50–54, Male	0.539	0.449	0.347	0.238	0.218
	Age 55–59, Male	0.616	0.514	0.400	0.277	0.256
	Age 60–64, Male	0.714	0.595	0.465	0.321	0.295
	Age 21–24, Female	0.305	0.248	0.177	0.107	0.094
	Age 25–29, Female	0.354	0.287	0.206	0.124	0.110
	Age 30–34, Female	0.488	0.405	0.310	0.216	0.200
	Age 35–39, Female	0.577	0.484	0.383	0.283	0.266
	Age 40–44, Female	0.649	0.546	0.435	0.323	0.303
	Age 45–49, Female	0.657	0.551	0.434	0.313	0.292
	Age 50–54, Female	0.745	0.630	0.502	0.366	0.341
	Age 55–59, Female	0.750	0.630	0.497	0.352	0.326
	Age 60–64, Female	0.791	0.659	0.517	0.358	0.329
	Diagnosis Factors					
HCC001	HIV/AIDS	6.235	5.807	5.521	5.516	5.522
HCC002	Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock.	9.383	9.212	9.114	9.160	9.174
HCC003	Central Nervous System Infections, Except Viral Meningitis.	6.370	6.277	6.220	6.241	6.247
HCC004	Viral or Unspecified Meningitis	4.473	4.254	4.130	4.074	4.071
HCC006	Opportunistic Infections	6.789	6.696	6.645	6.621	6.616
HCC008	Metastatic Cancer	22.838	22.426	22.159	22.199	22.211
HCC009	Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia.	11.917	11.605	11.406	11.395	11.396
HCC010	Non-Hodgkin's Lymphomas and Other Cancers and Tumors.	5.534	5.319	5.179	5.120	5.110
HCC011	Colorectal, Breast (Age <50), Kidney, and Other Cancers.	4.815	4.600	4.456	4.394	4.383
HCC012	Breast (Age 50+) and Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors.	2.802	2.646	2.540	2.476	2.465
HCC013	Thyroid Cancer, Melanoma, Neurofibromatosis, and Other Cancers and Tumors.	1.341	1.207	1.109	1.006	0.986
HCC018	Pancreas Transplant Status/Complications.	4.794	4.593	4.477	4.492	4.501
HCC019	Diabetes with Acute Complications	0.653	0.580	0.514	0.436	0.421
HCC020	Diabetes with Chronic Complications	0.653	0.580	0.514	0.436	0.421
HCC021	Diabetes without Complication	0.653	0.580	0.514	0.436	0.421
HCC023	Protein-Calorie Malnutrition	12.580	12.578	12.571	12.634	12.646
HCC026	Mucopolysaccharidosis	2.029	1.924	1.850	1.788	1.777
HCC027	Lipidoses and Glycogenosis	2.029	1.924	1.850	1.788	1.777
HCC029	Amyloidosis, Porphyria, and Other Metabolic Disorders.	2.029	1.924	1.850	1.788	1.777
HCC030	Adrenal, Pituitary, and Other Significant Endocrine Disorders.	2.029	1.924	1.850	1.788	1.777
HCC034	Liver Transplant Status/Complications	11.397	11.276	11.208	11.197	11.197
HCC035	End-Stage Liver Disease	3.867	3.685	3.578	3.554	3.553
HCC036	Cirrhosis of Liver	1.349	1.227	1.151	1.099	1.090
HCC037C	Chronic Viral Hepatitis C	0.927	0.815	0.739	0.681	0.670
HCC037B	Chronic Hepatitis, Other/Unspecified	0.927	0.815	0.739	0.681	0.670
HCC038	Acute Liver Failure/Disease, Including Neonatal Hepatitis.	3.867	3.685	3.578	3.554	3.553
HCC041	Intestine Transplant Status/Complications	25.865	25.802	25.746	25.800	25.809
HCC042	Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis.	10.587	10.344	10.191	10.203	10.210
HCC045	Intestinal Obstruction	6.035	5.786	5.642	5.641	5.645
HCC046	Chronic Pancreatitis	4.794	4.593	4.477	4.492	4.501
HCC047	Acute Pancreatitis/Other Pancreatic Disorders and Intestinal Malabsorption.	2.435	2.269	2.165	2.106	2.096
HCC048	Inflammatory Bowel Disease	2.071	1.894	1.772	1.677	1.660
HCC054	Necrotizing Fasciitis	6.018	5.837	5.720	5.726	5.729
HCC055	Bone/Joint/Muscle Infections/Necrosis	6.018	5.837	5.720	5.726	5.729
HCC056	Rheumatoid Arthritis and Specified Autoimmune Disorders.	2.291	2.147	2.045	1.980	1.968

TABLE 3—DRAFT ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2018 BENEFIT YEAR—Continued

HCC or RXC No.	Factor	Platinum	Gold	Silver	Bronze	Catastrophic
HCC057	Systemic Lupus Erythematosus and Other Autoimmune Disorders.	1.038	0.924	0.840	0.743	0.725
HCC061	Osteogenesis Imperfecta and Other Osteodystrophies.	2.907	2.726	2.599	2.526	2.513
HCC062	Congenital/Developmental Skeletal and Connective Tissue Disorders.	2.907	2.726	2.599	2.526	2.513
HCC063	Cleft Lip/Cleft Palate	1.167	1.024	0.929	0.850	0.837
HCC066	Hemophilia	39.609	39.350	39.166	39.159	39.162
HCC067	Myelodysplastic Syndromes and Myelofibrosis.	11.869	11.741	11.660	11.665	11.668
HCC068	Aplastic Anemia	11.869	11.741	11.660	11.665	11.668
HCC069	Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn.	8.427	8.278	8.177	8.155	8.153
HCC070	Sickle Cell Anemia (Hb-SS)	8.427	8.278	8.177	8.155	8.153
HCC071	Thalassemia Major	8.427	8.278	8.177	8.155	8.153
HCC073	Combined and Other Severe Immunodeficiencies.	4.892	4.758	4.675	4.667	4.667
HCC074	Disorders of the Immune Mechanism	4.892	4.758	4.675	4.667	4.667
HCC075	Coagulation Defects and Other Specified Hematological Disorders.	2.529	2.440	2.376	2.340	2.333
HCC081	Drug Psychosis	3.781	3.546	3.395	3.284	3.264
HCC082	Drug Dependence	3.781	3.546	3.395	3.284	3.264
HCC087	Schizophrenia	3.128	2.892	2.742	2.660	2.650
HCC088	Major Depressive and Bipolar Disorders	1.641	1.493	1.388	1.283	1.263
HCC089	Reactive and Unspecified Psychosis, Delusional Disorders.	1.641	1.493	1.388	1.283	1.263
HCC090	Personality Disorders	1.148	1.031	0.932	0.823	0.803
HCC094	Anorexia/Bulimia Nervosa	2.744	2.588	2.481	2.417	2.405
HCC096	Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes.	2.458	2.338	2.257	2.195	2.184
HCC097	Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes.	0.830	0.734	0.657	0.573	0.557
HCC102	Autistic Disorder	1.148	1.031	0.932	0.823	0.803
HCC103	Pervasive Developmental Disorders, Except Autistic Disorder.	1.148	1.031	0.932	0.823	0.803
HCC106	Traumatic Complete Lesion Cervical Spinal Cord.	11.049	10.893	10.791	10.778	10.778
HCC107	Quadriplegia	11.049	10.893	10.791	10.778	10.778
HCC108	Traumatic Complete Lesion Dorsal Spinal Cord.	8.671	8.523	8.427	8.408	8.406
HCC109	Paraplegia	8.671	8.523	8.427	8.408	8.406
HCC110	Spinal Cord Disorders/Injuries	5.532	5.332	5.208	5.169	5.164
HCC111	Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease.	2.668	2.450	2.316	2.260	2.251
HCC112	Quadriplegic Cerebral Palsy	1.080	0.938	0.840	0.764	0.749
HCC113	Cerebral Palsy, Except Quadriplegic	0.192	0.134	0.092	0.053	0.046
HCC114	Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies.	0.060	0.001	0.000	0.000	0.000
HCC115	Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy.	5.157	5.017	4.930	4.902	4.898
HCC117	Muscular Dystrophy	2.107	1.957	1.867	1.781	1.764
HCC118	Multiple Sclerosis	3.689	3.494	3.369	3.302	3.290
HCC119	Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders.	2.107	1.957	1.867	1.781	1.764
HCC120	Seizure Disorders and Convulsions	1.452	1.310	1.212	1.130	1.115
HCC121	Hydrocephalus	5.899	5.789	5.703	5.670	5.664
HCC122	Non-Traumatic Coma, and Brain Compression/Anoxic Damage.	8.620	8.493	8.401	8.391	8.389
HCC125	Respirator Dependence/Tracheostomy Status.	30.475	30.454	30.436	30.506	30.519
HCC126	Respiratory Arrest	9.375	9.232	9.141	9.195	9.209
HCC127	Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes.	9.375	9.232	9.141	9.195	9.209
HCC128	Heart Assistive Device/Artificial Heart	29.127	28.909	28.771	28.795	28.804
HCC129	Heart Transplant	29.127	28.909	28.771	28.795	28.804
HCC130	Congestive Heart Failure	2.083	1.986	1.920	1.881	1.874
HCC131	Acute Myocardial Infarction	9.478	9.159	8.960	9.055	9.080

TABLE 3—DRAFT ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2018 BENEFIT YEAR—Continued

HCC or RXC No.	Factor	Platinum	Gold	Silver	Bronze	Catastrophic
HCC132	Unstable Angina and Other Acute Ischemic Heart Disease.	4.795	4.543	4.402	4.400	4.405
HCC135	Heart Infection/Inflammation, Except Rheumatic.	5.529	5.410	5.332	5.302	5.296
HCC142	Specified Heart Arrhythmias	2.066	1.947	1.866	1.801	1.789
HCC145	Intracranial Hemorrhage	8.635	8.374	8.215	8.204	8.206
HCC146	Ischemic or Unspecified Stroke	2.923	2.754	2.664	2.659	2.663
HCC149	Cerebral Aneurysm and Arteriovenous Malformation.	3.711	3.533	3.423	3.368	3.358
HCC150	Hemiplegia/Hemiparesis	5.032	4.940	4.885	4.924	4.933
HCC151	Monoplegia, Other Paralytic Syndromes	3.175	3.053	2.978	2.951	2.948
HCC153	Atherosclerosis of the Extremities with Ulceration or Gangrene.	9.389	9.311	9.262	9.334	9.351
HCC154	Vascular Disease with Complications	7.107	6.934	6.827	6.815	6.816
HCC156	Pulmonary Embolism and Deep Vein Thrombosis.	3.490	3.338	3.244	3.203	3.197
HCC158	Lung Transplant Status/Complications	28.437	28.278	28.176	28.253	28.273
HCC159	Cystic Fibrosis	7.180	6.909	6.724	6.702	6.702
HCC160	Chronic Obstructive Pulmonary Disease, Including Bronchiectasis.	0.912	0.811	0.731	0.645	0.629
HCC161	Asthma	0.912	0.811	0.731	0.645	0.629
HCC162	Fibrosis of Lung and Other Lung Disorders.	1.756	1.648	1.580	1.532	1.522
HCC163	Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections.	6.476	6.409	6.367	6.375	6.378
HCC183	Kidney Transplant Status	6.985	6.756	6.622	6.592	6.590
HCC184	End Stage Renal Disease	23.091	22.895	22.769	22.834	22.850
HCC187	Chronic Kidney Disease, Stage 5	0.407	0.338	0.298	0.292	0.293
HCC188	Chronic Kidney Disease, Severe (Stage 4).	0.407	0.338	0.298	0.292	0.293
HCC203	Ectopic and Molar Pregnancy, Except with Renal Failure, Shock, or Embolism.	1.293	1.135	1.012	0.822	0.778
HCC204	Miscarriage with Complications	1.293	1.135	1.012	0.822	0.778
HCC205	Miscarriage with No or Minor Complications.	1.293	1.135	1.012	0.822	0.778
HCC207	Completed Pregnancy With Major Complications.	3.490	3.045	2.837	2.643	2.632
HCC208	Completed Pregnancy With Complications.	3.490	3.045	2.837	2.643	2.632
HCC209	Completed Pregnancy with No or Minor Complications.	3.490	3.045	2.837	2.643	2.632
HCC217	Chronic Ulcer of Skin, Except Pressure	2.013	1.911	1.851	1.833	1.832
HCC226	Hip Fractures and Pathological Vertebral or Humerus Fractures.	9.065	8.860	8.731	8.757	8.765
HCC227	Pathological Fractures, Except of Vertebrae, Hip, or Humerus.	2.062	1.945	1.860	1.782	1.768
HCC251	Stem Cell, Including Bone Marrow, Transplant Status/Complications.	26.861	26.861	26.858	26.884	26.889
HCC253	Artificial Openings for Feeding or Elimination.	9.024	8.933	8.876	8.907	8.915
HCC254	Amputation Status, Lower Limb/Amputation Complications.	4.537	4.406	4.327	4.351	4.360
Interaction Factors						
SEVERE x HCC006	Severe illness x Opportunistic Infections	9.192	9.391	9.511	9.626	9.645
SEVERE x HCC008	Severe illness x Metastatic Cancer	9.192	9.391	9.511	9.626	9.645
SEVERE x HCC009	Severe illness x Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia.	9.192	9.391	9.511	9.626	9.645
SEVERE x HCC010	Severe illness x Non-Hodgkin's Lymphomas and Other Cancers and Tumors.	9.192	9.391	9.511	9.626	9.645
SEVERE x HCC115	Severe illness x Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy.	9.192	9.391	9.511	9.626	9.645
SEVERE x HCC135	Severe illness x Heart Infection/Inflammation, Except Rheumatic.	9.192	9.391	9.511	9.626	9.645
SEVERE x HCC145	Severe illness x Intracranial Hemorrhage	9.192	9.391	9.511	9.626	9.645

TABLE 3—DRAFT ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2018 BENEFIT YEAR—Continued

HCC or RXC No.	Factor	Platinum	Gold	Silver	Bronze	Catastrophic
SEVERE x G06	Severe illness x HCC group G06 (G06 is HCC Group 6 which includes the following HCCs in the blood disease category: 67, 68).	9.192	9.391	9.511	9.626	9.645
SEVERE x G08	Severe illness x HCC group G08 (G08 is HCC Group 8 which includes the following HCCs in the blood disease category: 73, 74).	9.192	9.391	9.511	9.626	9.645
SEVERE x HCC035	Severe illness x End-Stage Liver Disease.	2.104	2.217	2.283	2.381	2.397
SEVERE x HCC038	Severe illness x Acute Liver Failure/Disease, Including Neonatal Hepatitis.	2.104	2.217	2.283	2.381	2.397
SEVERE x HCC153	Severe illness x Atherosclerosis of the Extremities with Ulceration or Gangrene.	2.104	2.217	2.283	2.381	2.397
SEVERE x HCC154	Severe illness x Vascular Disease with Complications.	2.104	2.217	2.283	2.381	2.397
SEVERE x HCC163	Severe illness x Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections.	2.104	2.217	2.283	2.381	2.397
SEVERE x HCC253	Severe illness x Artificial Openings for Feeding or Elimination.	2.104	2.217	2.283	2.381	2.397
SEVERE x G03	Severe illness x HCC group G03 (G03 is HCC Group 3 which includes the following HCCs in the musculoskeletal disease category: 54, 55).	2.104	2.217	2.283	2.381	2.397
	Enrollment Duration Factors					
	One month of enrollment	0.525	0.467	0.425	0.410	0.409
	Two months of enrollment	0.436	0.380	0.334	0.318	0.317
	Three months of enrollment	0.389	0.337	0.292	0.272	0.270
	Four months of enrollment	0.304	0.265	0.227	0.210	0.209
	Five months of enrollment	0.266	0.231	0.196	0.178	0.176
	Six months of enrollment	0.242	0.211	0.180	0.163	0.162
	Seven months of enrollment	0.215	0.190	0.162	0.147	0.145
	Eight months of enrollment	0.166	0.147	0.127	0.116	0.114
	Nine months of enrollment	0.112	0.101	0.089	0.085	0.084
	Ten months of enrollment	0.106	0.097	0.089	0.085	0.084
	Eleven months of enrollment	0.089	0.084	0.079	0.077	0.077
RXC 01	Anti-Hepatitis C (HCV) Agents	24.047	23.595	23.306	23.380	23.398
RXC 02	Anti-HIV Agents	6.347	5.898	5.602	5.441	5.416
RXC 03	Antiarrhythmics	2.340	2.244	2.167	2.098	2.083
RXC 04	Phosphate Binders	12.989	12.879	12.808	12.820	12.826
RXC 05	Inflammatory Bowel Disease Agents	1.960	1.790	1.673	1.509	1.476
RXC 06b	Insulin	1.381	1.257	1.130	0.975	0.943
RXC 06a	Anti-Diabetic Agents, Except Insulin and Metformin Only.	0.578	0.503	0.428	0.327	0.306
RXC 07	Multiple Sclerosis Agents	17.082	16.387	15.941	15.936	15.940
RXC 08	Immune Suppressants and Immunomodulators.	10.202	9.647	9.297	9.303	9.317
RXC 09	Cystic Fibrosis Agents	18.095	17.782	17.584	17.721	17.752
RXC 01 x HCC37C, 036, 035, 034	Additional effect for enrollees with RXC Anti-Hepatitis C (HCV) Agents and HCC (Liver Transplant Status/Complications or End-Stage Liver Disease or Cirrhosis of Liver or Chronic Viral Hepatitis).	3.237	3.376	3.468	3.549	3.565
RXC 02 x HCC001	Additional effect for enrollees with RXC Anti-HIV Agents and HCC HIV/AIDS.	−2.233	−1.878	−1.632	−1.427	−1.393
RXC 03 x HCC142	Additional effect for enrollees with RXC Antiarrhythmics and HCC Specified Heart Arrhythmias.	−0.131	−0.104	−0.062	0.010	0.024
RXC 04 x HCC184, 183, 187, 188	Additional effect for enrollees with RXC Phosphate Binders and HCC (End Stage Renal Disease or Kidney Transplant Status or Chronic Kidney Disease, Stage 5 or Chronic Kidney Disease, Severe (Stage 4)).	8.069	8.146	8.187	8.273	8.285

TABLE 3—DRAFT ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2018 BENEFIT YEAR—Continued

HCC or RXC No.	Factor	Platinum	Gold	Silver	Bronze	Catastrophic
RXC 05 x HCC048, 041	Additional effect for enrollees with RXC Inflammatory Bowel Disease Agents and (HCC Inflammatory Bowel Disease or Intestine Transplant Status/Complications).	−1.265	−1.176	−1.092	−0.997	−0.978
RXC 06b x HCC018, 019, 020, 021	Additional effect for enrollees with RXC Insulin and (HCC Pancreas Transplant Status/Complications or Diabetes with Acute Complications or Diabetes with Chronic Complications or Diabetes without Complication).	0.283	0.254	0.310	0.390	0.406
RXC 06a x HCC018, 019, 020, 021	Additional effect for enrollees with RXC Anti-Diabetic Agents, Except Insulin and Metformin Only and (HCC Pancreas Transplant Status/Complications or Diabetes with Acute Complications or Diabetes with Chronic Complications or Diabetes without Complication).	−0.205	−0.184	−0.141	−0.119	−0.117
RXC 07 x HCC118	Additional effect for enrollees with RXC Multiple Sclerosis Agents and HCC Multiple Sclerosis.	−1.231	−0.862	−0.629	−0.462	−0.430
RXC 08 x HCC056 or 057, and 048 or 041.	Additional effect for enrollees with RXC Immune Suppressants and Immunomodulators and (HCC Inflammatory Bowel Disease or Intestine Transplant Status/Complications) and (HCC Rheumatoid Arthritis and Specified Autoimmune Disorders or Systemic Lupus Erythematosus and Other Autoimmune Disorders).	−0.001	−0.006	0.008	−0.018	−0.020
RXC 08 x HCC056	Additional effect for enrollees with RXC Immune Suppressants and Immunomodulators and HCC Rheumatoid Arthritis and Specified Autoimmune Disorders.	−1.947	−1.756	−1.623	−1.491	−1.470
RXC 08 x HCC057	Additional effect for enrollees with RXC Immune Suppressants and Immunomodulators and HCC Systemic Lupus Erythematosus and Other Autoimmune Disorders.	−0.902	−0.774	−0.668	−0.536	−0.513
RXC 08 x HCC048, 041	Additional effect for enrollees with RXC Immune Suppressants and Immunomodulators and (HCC Inflammatory Bowel Disease or Intestine Transplant Status/Complications).	0.969	1.219	1.359	1.538	1.567
RXC 09 x HCC159, 158	Additional effect for enrollees with RXC Cystic Fibrosis Agents and (HCC Cystic Fibrosis or Lung Transplant Status/Complications).	17.041	17.236	17.344	17.321	17.312
RXC 10 x HCC036, 035, 034	Additional effect for enrollees with RXC Ammonia Detoxicants and (HCC Liver Transplant Status/Complications or End-Stage Liver Disease or Cirrhosis of Liver).	6.937	6.904	6.880	6.969	6.988
RXC 11 x HCC130, 129, 128	Additional effect for enrollees with RXC Diuretics, Loop and Select Potassium-sparing and (HCC Heart Assistive Device/Artificial Heart or Heart Transplant or Congestive Heart Failure).	2.288	2.296	2.312	2.395	2.412

TABLE 4—HHS HCCS IN THE SEVERITY ILLNESS INDICATOR VARIABLE

Description
Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock
Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis
Seizure Disorders and Convulsions
Non-Traumatic Coma, Brain Compression/Anoxic Damage
Respirator Dependence/Tracheostomy Status
Respiratory Arrest

TABLE 4—HHS HCCs IN THE SEVERITY ILLNESS INDICATOR VARIABLE—Continued

Description
Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes
Pulmonary Embolism and Deep Vein Thrombosis

TABLE 5—DRAFT CHILD RISK ADJUSTMENT MODEL FACTORS FOR 2018 BENEFIT YEAR

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Demographic Factors					
Age 2–4, Male	0.212	0.153	0.087	0.033	0.023
Age 5–9, Male	0.147	0.104	0.054	0.014	0.008
Age 10–14, Male	0.208	0.162	0.104	0.060	0.053
Age 15–20, Male	0.277	0.223	0.161	0.106	0.097
Age 2–4, Female	0.167	0.116	0.060	0.019	0.012
Age 5–9, Female	0.120	0.082	0.041	0.010	0.006
Age 10–14, Female	0.196	0.152	0.100	0.062	0.056
Age 15–20, Female	0.316	0.254	0.182	0.114	0.103
Diagnosis Factors					
HIV/AIDS	4.800	4.385	4.113	4.004	3.988
Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock	13.903	13.745	13.654	13.669	13.677
Central Nervous System Infections, Except Viral Meningitis	9.476	9.308	9.201	9.199	9.200
Viral or Unspecified Meningitis	2.562	2.377	2.265	2.168	2.155
Opportunistic Infections	17.772	17.708	17.666	17.654	17.652
Metastatic Cancer	30.910	30.686	30.519	30.503	30.502
Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia	10.927	10.674	10.490	10.418	10.407
Non-Hodgkin's Lymphomas and Other Cancers and Tumors	8.816	8.573	8.397	8.296	8.280
Colorectal, Breast (Age < 50), Kidney, and Other Cancers	3.249	3.057	2.915	2.796	2.774
Breast (Age 50+) and Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors	2.874	2.699	2.570	2.457	2.436
Thyroid Cancer, Melanoma, Neurofibromatosis, and Other Cancers and Tumors	1.540	1.398	1.284	1.166	1.143
Pancreas Transplant Status/Complications	22.703	22.580	22.508	22.512	22.514
Diabetes with Acute Complications	2.327	2.036	1.864	1.604	1.554
Diabetes with Chronic Complications	2.327	2.036	1.864	1.604	1.554
Diabetes without Complication	2.327	2.036	1.864	1.604	1.554
Protein-Calorie Malnutrition	11.735	11.655	11.595	11.624	11.630
Mucopolysaccharidosis	8.061	7.812	7.632	7.583	7.576
Lipidoses and Glycogenosis	8.061	7.812	7.632	7.583	7.576
Congenital Metabolic Disorders, Not Elsewhere Classified	8.061	7.812	7.632	7.583	7.576
Amyloidosis, Porphyria, and Other Metabolic Disorders	8.061	7.812	7.632	7.583	7.576
Adrenal, Pituitary, and Other Significant Endocrine Disorders	8.061	7.812	7.632	7.583	7.576
Liver Transplant Status/Complications	22.703	22.580	22.508	22.512	22.514
End-Stage Liver Disease	10.859	10.717	10.633	10.630	10.631
Cirrhosis of Liver	8.352	8.213	8.110	8.066	8.058
Chronic Viral Hepatitis C	4.120	3.983	3.879	3.824	3.814
Chronic Hepatitis, Other/Unspecified	2.054	1.932	1.829	1.747	1.731
Acute Liver Failure/Disease, Including Neonatal Hepatitis	10.859	10.717	10.624	10.611	10.611
Intestine Transplant Status/Complications	22.703	22.580	22.508	22.512	22.514
Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis	13.110	12.802	12.595	12.593	12.597
Intestinal Obstruction	4.707	4.497	4.350	4.253	4.236
Chronic Pancreatitis	9.112	8.902	8.776	8.765	8.766
Acute Pancreatitis/Other Pancreatic Disorders and Intestinal Malabsorption	2.136	2.022	1.933	1.837	1.819
Inflammatory Bowel Disease	6.142	5.791	5.556	5.440	5.420
Necrotizing Fasciitis	4.093	3.884	3.736	3.663	3.652
Bone/Joint/Muscle Infections/Necrosis	4.093	3.884	3.736	3.663	3.652
Rheumatoid Arthritis and Specified Autoimmune Disorders	3.806	3.585	3.416	3.315	3.299
Systemic Lupus Erythematosus and Other Autoimmune Disorders	1.381	1.259	1.152	1.034	1.010
Osteogenesis Imperfecta and Other Osteodystrophies	1.517	1.404	1.309	1.227	1.212
Congenital/Developmental Skeletal and Connective Tissue Disorders	1.517	1.404	1.309	1.227	1.212
Cleft Lip/Cleft Palate	1.540	1.357	1.225	1.100	1.078
Hemophilia	53.113	52.658	52.343	52.302	52.298
Myelodysplastic Syndromes and Myelofibrosis	15.139	14.983	14.876	14.854	14.850
Aplastic Anemia	15.139	14.983	14.876	14.854	14.850
Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn	7.221	6.970	6.796	6.707	6.693
Sickle Cell Anemia (Hb-SS)	7.221	6.970	6.796	6.707	6.693
Thalassemia Major	7.221	6.970	6.796	6.707	6.693

TABLE 5—DRAFT CHILD RISK ADJUSTMENT MODEL FACTORS FOR 2018 BENEFIT YEAR—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Combined and Other Severe Immunodeficiencies	6.066	5.904	5.793	5.728	5.716
Disorders of the Immune Mechanism	6.066	5.904	5.793	5.728	5.716
Coagulation Defects and Other Specified Hematological Disorders	4.317	4.196	4.100	4.026	4.012
Drug Psychosis	5.265	5.029	4.880	4.805	4.795
Drug Dependence	5.265	5.029	4.880	4.805	4.795
Schizophrenia	5.132	4.770	4.535	4.420	4.404
Major Depressive and Bipolar Disorders	1.889	1.689	1.536	1.363	1.331
Reactive and Unspecified Psychosis, Delusional Disorders	1.889	1.689	1.536	1.363	1.331
Personality Disorders	0.731	0.623	0.517	0.377	0.352
Anorexia/Bulimia Nervosa	2.978	2.791	2.658	2.587	2.575
Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes	3.589	3.400	3.289	3.249	3.242
Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes	1.786	1.624	1.515	1.424	1.409
Autistic Disorder	1.680	1.518	1.385	1.230	1.201
Pervasive Developmental Disorders, Except Autistic Disorder	0.833	0.721	0.604	0.442	0.411
Traumatic Complete Lesion Cervical Spinal Cord	11.881	11.786	11.732	11.789	11.801
Quadriplegia	11.881	11.786	11.732	11.789	11.801
Traumatic Complete Lesion Dorsal Spinal Cord	11.881	11.786	11.725	11.746	11.752
Paraplegia	11.881	11.786	11.725	11.746	11.752
Spinal Cord Disorders/Injuries	4.351	4.142	4.003	3.914	3.898
Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease	8.196	7.981	7.831	7.770	7.760
Quadriplegic Cerebral Palsy	3.417	3.193	3.065	3.070	3.076
Cerebral Palsy, Except Quadriplegic	0.942	0.779	0.674	0.584	0.568
Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies	1.375	1.244	1.151	1.074	1.060
Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy	8.375	8.216	8.105	8.066	8.062
Muscular Dystrophy	2.984	2.806	2.690	2.603	2.589
Multiple Sclerosis	7.910	7.607	7.400	7.343	7.335
Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders	2.984	2.806	2.690	2.603	2.589
Seizure Disorders and Convulsions	1.926	1.770	1.643	1.501	1.475
Hydrocephalus	4.467	4.354	4.282	4.263	4.262
Non-Traumatic Coma, and Brain Compression/Anoxic Damage	6.453	6.327	6.239	6.191	6.181
Respirator Dependence/Tracheostomy Status	32.315	32.208	32.148	32.261	32.283
Respiratory Arrest	11.360	11.164	11.050	11.040	11.042
Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes	11.360	11.164	11.050	11.040	11.042
Heart Assistive Device/Artificial Heart	22.703	22.580	22.508	22.512	22.514
Heart Transplant	22.703	22.580	22.508	22.512	22.514
Congestive Heart Failure	6.223	6.125	6.047	5.996	5.986
Acute Myocardial Infarction	6.605	6.446	6.346	6.347	6.344
Unstable Angina and Other Acute Ischemic Heart Disease	4.221	4.140	4.087	4.096	4.095
Heart Infection/Inflammation, Except Rheumatic	12.729	12.616	12.541	12.513	12.506
Hypoplastic Left Heart Syndrome and Other Severe Congenital Heart Disorders	5.537	5.354	5.200	5.075	5.051
Major Congenital Heart/Circulatory Disorders	1.605	1.503	1.388	1.269	1.248
Atrial and Ventricular Septal Defects, Patent Ductus Arteriosus, and Other Congenital Heart/Circulatory Disorders	1.097	1.007	0.903	0.806	0.791
Specified Heart Arrhythmias	3.612	3.450	3.325	3.244	3.231
Intracranial Hemorrhage	13.701	13.470	13.325	13.306	13.306
Ischemic or Unspecified Stroke	7.162	7.052	6.988	6.988	6.988
Cerebral Aneurysm and Arteriovenous Malformation	3.683	3.492	3.370	3.309	3.296
Hemiplegia/Hemiparesis	4.315	4.218	4.161	4.142	4.142
Monoplegia, Other Paralytic Syndromes	2.928	2.794	2.713	2.674	2.670
Atherosclerosis of the Extremities with Ulceration or Gangrene	12.281	12.023	11.868	11.776	11.769
Vascular Disease with Complications	14.433	14.288	14.193	14.195	14.196
Pulmonary Embolism and Deep Vein Thrombosis	13.113	12.971	12.885	12.897	12.903
Lung Transplant Status/Complications	22.703	22.580	22.508	22.512	22.514
Cystic Fibrosis	19.566	19.152	18.864	18.886	18.897
Chronic Obstructive Pulmonary Disease, Including Bronchiectasis	0.406	0.341	0.255	0.161	0.145
Asthma	0.406	0.341	0.255	0.161	0.145
Fibrosis of Lung and Other Lung Disorders	3.944	3.817	3.717	3.645	3.634
Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections	9.576	9.531	9.499	9.525	9.530
Kidney Transplant Status	14.807	14.499	14.304	14.289	14.290
End Stage Renal Disease	35.188	35.032	34.934	35.002	35.014
Chronic Kidney Disease, Stage 5	2.921	2.783	2.680	2.565	2.542
Chronic Kidney Disease, Severe (Stage 4)	2.921	2.783	2.680	2.565	2.542
Ectopic and Molar Pregnancy, Except with Renal Failure, Shock, or Embolism	1.061	0.903	0.776	0.575	0.533
Miscarriage with Complications	1.061	0.903	0.776	0.575	0.533

TABLE 5—DRAFT CHILD RISK ADJUSTMENT MODEL FACTORS FOR 2018 BENEFIT YEAR—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Miscarriage with No or Minor Complications	1.061	0.903	0.776	0.575	0.533
Completed Pregnancy With Major Complications	3.029	2.620	2.419	2.194	2.171
Completed Pregnancy With Complications	3.029	2.620	2.419	2.194	2.171
Completed Pregnancy with No or Minor Complications	3.029	2.620	2.419	2.194	2.171
Chronic Ulcer of Skin, Except Pressure	1.955	1.866	1.784	1.717	1.705
Hip Fractures and Pathological Vertebral or Humerus Fractures	5.656	5.408	5.224	5.116	5.096
Pathological Fractures, Except of Vertebrae, Hip, or Humerus	1.397	1.276	1.157	1.026	1.000
Stem Cell, Including Bone Marrow, Transplant Status/Complications	22.703	22.580	22.508	22.512	22.514
Artificial Openings for Feeding or Elimination	12.969	12.866	12.816	12.920	12.941
Amputation Status, Lower Limb/Amputation Complications	7.644	7.390	7.240	7.140	7.125

TABLE 6—HHS HCCS INCLUDED IN INFANT MODEL MATURITY CATEGORIES

Maturity category	HCC/Description
Extremely Immature	Extremely Immature Newborns, Birthweight < 500 Grams
Extremely Immature	Extremely Immature Newborns, Including Birthweight 500–749 Grams
Extremely Immature	Extremely Immature Newborns, Including Birthweight 750–999 Grams
Immature	Premature Newborns, Including Birthweight 1000–1499 Grams
Immature	Premature Newborns, Including Birthweight 1500–1999 Grams
Premature/Multiples	Premature Newborns, Including Birthweight 2000–2499 Grams
Premature/Multiples	Other Premature, Low Birthweight, Malnourished, or Multiple Birth Newborns
Term	Term or Post-Term Singleton Newborn, Normal or High Birthweight
Age 1	All age 1 infants

TABLE 7—HHS HCCS INCLUDED IN INFANT MODEL SEVERITY CATEGORIES

Severity Category	HCC
Severity Level 5 (Highest)	Metastatic Cancer
Severity Level 5	Pancreas Transplant Status/Complications
Severity Level 5	Liver Transplant Status/Complications
Severity Level 5	End-Stage Liver Disease
Severity Level 5	Intestine Transplant Status/Complications
Severity Level 5	Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis
Severity Level 5	Respirator Dependence/Tracheostomy Status
Severity Level 5	Heart Assistive Device/Artificial Heart
Severity Level 5	Heart Transplant
Severity Level 5	Congestive Heart Failure
Severity Level 5	Hypoplastic Left Heart Syndrome and Other Severe Congenital Heart Disorders
Severity Level 5	Lung Transplant Status/Complications
Severity Level 5	Kidney Transplant Status
Severity Level 5	End Stage Renal Disease
Severity Level 5	Stem Cell, Including Bone Marrow, Transplant Status/Complications
Severity Level 4	Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock
Severity Level 4	Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia
Severity Level 4	Mucopolysaccharidosis
Severity Level 4	Major Congenital Anomalies of Diaphragm, Abdominal Wall, and Esophagus, Age < 2
Severity Level 4	Myelodysplastic Syndromes and Myelofibrosis
Severity Level 4	Aplastic Anemia
Severity Level 4	Combined and Other Severe Immunodeficiencies
Severity Level 4	Traumatic Complete Lesion Cervical Spinal Cord
Severity Level 4	Quadriplegia
Severity Level 4	Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease
Severity Level 4	Quadriplegic Cerebral Palsy
Severity Level 4	Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy
Severity Level 4	Non-Traumatic Coma, Brain Compression/Anoxic Damage
Severity Level 4	Respiratory Arrest
Severity Level 4	Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes
Severity Level 4	Acute Myocardial Infarction
Severity Level 4	Heart Infection/Inflammation, Except Rheumatic
Severity Level 4	Major Congenital Heart/Circulatory Disorders

TABLE 7—HHS HCCs INCLUDED IN INFANT MODEL SEVERITY CATEGORIES—Continued

Severity Category	HCC
Severity Level 4	Intracranial Hemorrhage
Severity Level 4	Ischemic or Unspecified Stroke
Severity Level 4	Vascular Disease with Complications
Severity Level 4	Pulmonary Embolism and Deep Vein Thrombosis
Severity Level 4	Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections
Severity Level 4	Chronic Kidney Disease, Stage 5
Severity Level 4	Hip Fractures and Pathological Vertebral or Humerus Fractures
Severity Level 4	Artificial Openings for Feeding or Elimination
Severity Level 3	HIV/AIDS
Severity Level 3	Central Nervous System Infections, Except Viral Meningitis
Severity Level 3	Opportunistic Infections
Severity Level 3	Non-Hodgkin's Lymphomas and Other Cancers and Tumors
Severity Level 3	Colorectal, Breast (Age < 50), Kidney and Other Cancers
Severity Level 3	Breast (Age 50+), Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors
Severity Level 3	Lipidoses and Glycogenosis
Severity Level 3	Adrenal, Pituitary, and Other Significant Endocrine Disorders
Severity Level 3	Acute Liver Failure/Disease, Including Neonatal Hepatitis
Severity Level 3	Intestinal Obstruction
Severity Level 3	Necrotizing Fasciitis
Severity Level 3	Bone/Joint/Muscle Infections/Necrosis
Severity Level 3	Osteogenesis Imperfecta and Other Osteodystrophies
Severity Level 3	Cleft Lip/Cleft Palate
Severity Level 3	Hemophilia
Severity Level 3	Disorders of the Immune Mechanism
Severity Level 3	Coagulation Defects and Other Specified Hematological Disorders
Severity Level 3	Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes
Severity Level 3	Traumatic Complete Lesion Dorsal Spinal Cord
Severity Level 3	Paraplegia
Severity Level 3	Spinal Cord Disorders/Injuries
Severity Level 3	Cerebral Palsy, Except Quadriplegic
Severity Level 3	Muscular Dystrophy
Severity Level 3	Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders
Severity Level 3	Hydrocephalus
Severity Level 3	Unstable Angina and Other Acute Ischemic Heart Disease
Severity Level 3	Atrial and Ventricular Septal Defects, Patent Ductus Arteriosus, and Other Congenital Heart/Circulatory Disorders
Severity Level 3	Specified Heart Arrhythmias
Severity Level 3	Cerebral Aneurysm and Arteriovenous Malformation
Severity Level 3	Hemiplegia/Hemiparesis
Severity Level 3	Cystic Fibrosis
Severity Level 3	Fibrosis of Lung and Other Lung Disorders
Severity Level 3	Pathological Fractures, Except of Vertebrae, Hip, or Humerus
Severity Level 2	Viral or Unspecified Meningitis
Severity Level 2	Thyroid, Melanoma, Neurofibromatosis, and Other Cancers and Tumors
Severity Level 2	Diabetes with Acute Complications
Severity Level 2	Diabetes with Chronic Complications
Severity Level 2	Diabetes without Complication
Severity Level 2	Protein-Calorie Malnutrition
Severity Level 2	Congenital Metabolic Disorders, Not Elsewhere Classified
Severity Level 2	Amyloidosis, Porphyria, and Other Metabolic Disorders
Severity Level 2	Cirrhosis of Liver
Severity Level 2	Chronic Pancreatitis
Severity Level 2	Inflammatory Bowel Disease
Severity Level 2	Rheumatoid Arthritis and Specified Autoimmune Disorders
Severity Level 2	Systemic Lupus Erythematosus and Other Autoimmune Disorders
Severity Level 2	Congenital/Developmental Skeletal and Connective Tissue Disorders
Severity Level 2	Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn
Severity Level 2	Sickle Cell Anemia (Hb-SS)
Severity Level 2	Drug Psychosis
Severity Level 2	Drug Dependence
Severity Level 2	Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes
Severity Level 2	Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies
Severity Level 2	Seizure Disorders and Convulsions
Severity Level 2	Monoplegia, Other Paralytic Syndromes
Severity Level 2	Atherosclerosis of the Extremities with Ulceration or Gangrene
Severity Level 2	Chronic Obstructive Pulmonary Disease, Including Bronchiectasis

TABLE 7—HHS HCCs INCLUDED IN INFANT MODEL SEVERITY CATEGORIES—Continued

Severity Category	HCC
Severity Level 2	Chronic Ulcer of Skin, Except Pressure
Severity Level 1	Chronic Hepatitis
(Lowest)	
Severity Level 1	Acute Pancreatitis/Other Pancreatic Disorders and Intestinal Malabsorption
Severity Level 1	Thalassemia Major
Severity Level 1	Autistic Disorder
Severity Level 1	Pervasive Developmental Disorders, Except Autistic Disorder
Severity Level 1	Multiple Sclerosis
Severity Level 1	Asthma
Severity Level 1	Chronic Kidney Disease, Severe (Stage 4)
Severity Level 1	Amputation Status, Lower Limb/Amputation Complications
Severity Level 1	No Severity HCCs

(5) Cost-Sharing Reductions (§ 153.320)

We proposed to continue including an adjustment for the receipt of cost-sharing reductions in the model to account for increased plan liability due to increased utilization of health care services by enrollees receiving cost-sharing reductions. The proposed cost-sharing reductions adjustment factors for 2018 risk adjustment are unchanged from those finalized in the 2017 Payment Notice and are set forth in Table 8. These adjustments are effective for risk adjustment for 2016 and later years, and are multiplied against the sum of the demographic, diagnosis, and interaction factors. We anticipate reexamining these factors in the annual HHS notice of benefit and payment parameters for the 2019 benefit year as additional enrollee-level data from the individual market becomes available. We are finalizing the cost-sharing reduction adjustment factors as proposed.

Comment: Commenters supported updating the cost-sharing reduction factors using enrollee-level data for the 2019 benefit year.

Response: We agree with commenters that the data from the individual market will allow HHS to most accurately update the cost-sharing reductions adjustment factors for future benefit years and intend to do so as soon as practicable.

TABLE 8—COST-SHARING REDUCTIONS ADJUSTMENT

Household income	Plan AV	Induced utilization factor
Silver Plan Variant Recipients		
100–150% of FPL	Plan Variation 94%	1.12
150–200% of FPL	Plan Variation 87%	1.12
200–250% of FPL	Plan Variation 73%	1.00
>250% of FPL	Standard Plan 70%	1.00
Zero Cost-Sharing Recipients		
<300% of FPL	Platinum (90%)	1.00
<300% of FPL	Gold (80%)	1.07
<300% of FPL	Silver (70%)	1.12
<300% of FPL	Bronze (60%)	1.15
Limited Cost-Sharing Recipients		
>300% of FPL	Platinum (90%)	1.00
>300% of FPL	Gold (80%)	1.07
>300% of FPL	Silver (70%)	1.12
>300% of FPL	Bronze (60%)	1.15

(6) Model Performance Statistics (§ 153.320)

To evaluate the model's performance, we examined its R-squared and predictive ratios. The R-squared statistic, which calculates the percentage of individual variation explained by a model, measures the predictive accuracy of the model overall. The predictive ratios measure the predictive accuracy of a model for different validation groups or subpopulations. The predictive ratio for each of the HHS risk adjustment models is the ratio of the weighted mean predicted plan liability for the model sample population to the weighted mean actual plan liability for the model sample population. The predictive ratio represents how well the model does on average at predicting plan liability for that subpopulation. A subpopulation that is predicted perfectly would have a predictive ratio of 1.0. For each of the HHS risk adjustment models, the R-squared statistic and the predictive ratio are in the range of published estimates for concurrent risk adjustment models.[35] Because we proposed to blend the coefficients from separately solved models based on MarketScan® 2013 and 2014 data in the proposed rule, we are

[35] Winkleman, Ross and Syed Mehmud. ''A Comparative Analysis of Claims-Based Tools for Health Risk Assessment.'' Society of Actuaries. April 2007.

publishing the R-squared statistic for each model and year separately to verify their statistical validity. We received no comments on the R-squared statistics for the models. The R-squared statistic for each model, reflecting the 2018 modeling refinements discussed above, is shown in Table 9.

Risk adjustment model	R-Squared statistic	
	2013	2014
Platinum Adult	0.4185	0.4140
Platinum Child	0.3117	0.3072
Platinum Infant	0.3509	0.3343
Gold Adult	0.4144	0.4093
Gold Child	0.3074	0.3023
Gold Infant	0.3490	0.3322
Silver Adult	0.4112	0.4057
Silver Child	0.3037	0.2984
Silver Infant	0.3480	0.3310
Bronze Adult	0.4089	0.4031
Bronze Child	0.3004	0.2948
Bronze Infant	0.3477	0.3307
Catastrophic Adult	0.4084	0.4025
Catastrophic Child	0.2997	0.2940
Catastrophic Infant	0.3477	0.3306

(7) Overview of the Payment Transfer Formula (§ 153.320)

We previously defined the calculation of plan average actuarial risk and the calculation of payments and charges in the Premium Stabilization Rule. In the 2014 Payment Notice, we combined those concepts into a risk adjustment payment transfer formula. Risk adjustment transfers (total payments and charges including outlier pooling) will be calculated after issuers have completed risk adjustment data reporting. The payment transfer formula includes a set of cost adjustment terms that require transfers to be calculated at the geographic rating area level for each plan (that is, HHS will calculate two separate transfer amounts for a plan that operates in two rating areas).

The payment transfer formula is designed to provide a per member per month (PMPM) transfer amount. The PMPM transfer amount derived from the payment transfer formula would be multiplied by each plan's total member months for the benefit year to determine the total payment due or charge owed by the issuer for that plan in a rating area.

The total payment or charge is thus calculated to balance the State market risk pool in question. In addition to the total charge collected and payment made for the State market risk pool, we proposed to add to the risk adjustment methodology additional transfers that would reflect the payments and charges assessed with respect to the costs of high-risk enrollees. We proposed to account for high-cost enrollees through transfer terms (a payment term and a charge term) that would be calculated separately from the State transfer formula. Thus, the non-outlier pooling portion of plan risk will continue to be calculated as the member month-weighted average of individual enrollee risk scores. In particular, we proposed to add one term that would reflect 60 percent of costs above $2 million, the proposed threshold for our payments for these enrollees, and another term that would reflect a percentage of PMPM premium adjustment to the transfer formula for the high-cost enrollee pool to maintain the balance of payment and charges within the risk adjustment program. We sought comment on this approach to balance transfers between high and low risk plans. We are finalizing this adjustment to the risk adjustment transfers as proposed, except we are lowering the threshold to $1 million, and establishing a coinsurance rate of 60 percent for 2018 and future benefit years.

i. Administrative Cost Adjustment in Statewide Average Premium

We received comments to the 2017 Payment Notice and the White Paper from commenters who believe that the inclusion of administrative costs in the Statewide average premium incorrectly increases risk adjustment transfers based on costs that are unrelated to the risk of the enrollee population. Comments ranged from requesting that administrative expenses be removed entirely from the Statewide average premium to requesting that HHS consider basing risk adjustment transfers on a portion of Statewide average premium—namely, the portion representing the sum of claims, claims adjustment expenses, and taxes that are calculated on premiums after risk adjustment transfers by using a specified percentage of Statewide average premiums. While commenters have stated that the inclusion of administrative costs in the Statewide average premium harms efficient plans, we noted in the 2017 Payment Notice and White Paper that low cost plans do not necessarily indicate efficient plans. Should a plan be low cost with low claims costs, it could be an indication of mispricing, as the issuer should be pricing for average risk. However, we also stated that we recognize that commenters are concerned that including fixed administrative costs in the Statewide average premium may increase risk adjustment transfers for all issuers based on a percentage of costs that are not dependent on enrollee risk. We considered some of the potential effects of excluding certain fixed administrative costs from the Statewide average premium. We noted that this modification to the treatment of administrative costs in the Statewide average premium would lower absolute risk adjustment transfers for all issuers by an equal percentage. We also noted that administrative costs are affected by claims costs and that correctly measuring the portion of administrative costs unaffected by claims costs may be difficult. An incorrect measurement of administrative costs could then result in plans with high-risk enrollees being undercompensated. In the proposed rule, we considered the impact of administrative expenses on risk adjustment transfers and sought comment on removing a portion of administrative expenses from the Statewide average premium for the 2018 benefit year or for future benefit years. Based on comments received, HHS will reduce the Statewide average premium in the risk adjustment transfer formula

by 14 percent to account for the proportion of administrative costs that do not vary with claims beginning for the 2018 benefit year.

Comment: Numerous commenters supported removing a portion of administrative expenses from the Statewide average premium for the 2018 benefit year or for future benefit years. One commenter sought clarification regarding how the exclusion of these expenses would be operationalized across all issuers uniformly since each issuer has its own expense assumptions. Other commenters suggested approaches by which HHS could remove fixed administrative expenses from the Statewide average premium in the payment transfer formula, including reducing the portion of administrative expenses from the Statewide average premium by 20 percent, the amount of non-claims costs, profit and taxes, the administrative expense amount reported through the Unified Rate Review Templates (URRTs), or other categorization of fixed administrative costs that would result in only including claims, claims-related expenses and taxes in the Statewide average premiums. Other commenters generally supported reducing Statewide average premium by a flat percentage. As a way to reflect the elimination of administrative costs in the transfer formula, one commenter suggested that HHS multiply the transfer amount by the amount allowed as administrative costs in each State's MLR laws. One commenter requested that HHS consult the American Academy of Actuaries and move to an approach that relies on market average costs or claims experience and add-on a claims-related adjustment to account for administrative costs that can vary with the level of claims experience.

One commenter supported this proposal beginning with the 2016 benefit year and requested HHS to retroactively implement this policy for the 2014 and 2015 benefit year.

One commenter did not support such an adjustment to the Statewide average premium, noting that there is no easy way to make this adjustment without favoring some issuers and promoting gaming. Another commenter asked HHS to delay this proposal for further study, and accept public comment on the impact of the inclusion of certain administrative costs and profit in the Statewide average premium. One commenter suggested that an iterative or phased-in approach could mitigate concerns about the accuracy of administrative cost allocation.

Response: HHS will reduce the Statewide average premium in the risk adjustment transfer formula by a fixed rate of 14 percent beginning for the 2018 benefit year, which we believe reasonably reflects the proportion of administrative costs that do not vary with claims. To derive this parameter, we analyzed administrative and other non-claims expenses (for example quality improvement expenses) in the MLR Annual Reporting Form, and estimated, by category, the extent to which the expenses varied with claims. We compared those expenses to the total costs that issuers finance through premiums, including claims, administrative expenses, and taxes, netting out claims costs financed through cost-sharing reduction payments. We compared these expenses to total costs, rather than directly to premiums, to ensure that the estimated administrative cost percentage was not distorted by under- or over-pricing during the years for which MLR data are available. Using this methodology, we determined that the mean administrative cost percentage is 14 percent. We believe that this percentage represents the mean administrative cost percentage in the individual and small group markets, and represents a reasonable percentage of administrative costs on which risk adjustment transfers should not be calculated. Below, we amend the calculation of the Statewide average premium to reflect average premiums in a risk pool, less 14 percent. We have amended the definition of the State average premium below to reflect this change. We are finalizing this adjustment beginning for the 2018 benefit year. However, we are not making this change for 2017 because issuers would not have had an opportunity to incorporate it into their rates for 2017.

Comment: A few commenters requested that HHS use a plan's own actual average premium instead of the Statewide average premium in the transfer formula.

Response: We have considered the use of a plan's own premium instead of the Statewide average premium. However, our analysis determined that this approach is likely to lead to substantial volatility in transfer results and even higher transfer charges for low-risk low-premium plans. Under such an approach, high-risk, high-premium plans would require even greater transfer payments; thus, low-risk, low-premium plans would be required to pay in an even higher percentage of their plan-specific premiums in risk adjustment transfer charges. In other words, the use of a plan's own premium does not reduce risk adjustment charges for low-cost and low-risk issuers, given the budget neutrality of the risk adjustment program.

The revised formula for the calculation of Statewide average premium beginning for the 2018 benefit year risk adjustment is:

$$\overline{P}_S = \left(\sum_i (s_i \cdot P_i) \right) * 0.86$$

Where:

s_i = plan *i*'s share of Statewide enrollment in the market in the risk pool;

P_i = Average premium per member month of plan *i*.

ii. The Payment Transfer Formula

The payment transfer formula is unchanged from what was finalized in the 2014 Payment Notice (78 FR 15430 through 15434), except with an adjustment to remove a portion of administrative costs from the Statewide average premium, as discussed above. Transfers (payments and charges) will be calculated as the difference between the plan premium estimate reflecting risk selection and the plan premium estimate not reflecting risk selection. As finalized in the 2014 Payment Notice, the HHS risk adjustment payment transfer formula is:

$$T_i = \left[\frac{PLRS_i \cdot IDF_i \cdot GCF_i}{\sum_i (s_i \cdot PLRS_i \cdot IDF_i \cdot GCF_i)} - \frac{AV_i \cdot ARF_i \cdot IDF_i \cdot GCF_i}{\sum_i (s_i \cdot AV_i \cdot ARF_i \cdot IDF_i \cdot GCF_i)}\right] \overline{P}_s$$

Where:
$\bar{P}_S$ = Statewide average premium;
$PLRS_i$ = plan *i*'s plan liability risk score;
AV_i = plan *i*'s metal level AV;
ARF_i = allowable rating factor;
IDF_i = plan *i*'s induced demand factor;
GCF_i = plan *i*'s geographic cost factor;
s_i = plan *i*'s share of Statewide enrollment.

The denominator is summed across all plans in the risk pool in the market in the State.

The difference between the two premium estimates in the payment transfer formula determines whether a plan pays a risk adjustment charge or receives a risk adjustment payment. Note that the value of the plan average risk score by itself does not determine whether a plan would be assessed a charge or receive a payment—even if the risk score is greater than 1.0, it is possible that the plan would be assessed a charge if the premium compensation that the plan may receive through its rating (as measured through the allowable rating factor) exceeds the plan's predicted liability associated with risk selection. Risk adjustment transfers are calculated at the risk pool level, and catastrophic plans are treated as a separate risk pool for purposes of risk adjustment.

This existing formula would be multiplied by the number of member months to determine the total payment or charge assessed with respect to plan average risk scores for a plan's geographic rating area for the market for the State and this payment or charge will be added to the transfer terms described above to account for the costs of high-risk enrollees.

Comment: A few commenters noted that the budget neutrality of the risk adjustment program leads to inadequate compensation for enrollees' risk and recommended a non-budget neutral risk adjustment program as with Medicare Advantage. Commenters also recommended capping risk adjustment charges if they exceed a certain percent of total premiums, applying issuer-specific caps with lower caps for smaller issuers, and also excluding carriers with experience and significant market share from risk adjustment as these carriers may have a sufficient scale to mitigate adverse selection. One commenter requested additional risk score information at the community- and State-level to allow them to make better decisions.

Response: In the absence of additional funding for the HHS-operated risk adjustment program, we continue to calculate risk adjustment transfers in a budget neutral manner and note that Medicare Part D risk adjustment transfers are also calculated in a budget neutral manner. We will not cap transfers as a percent of premiums or by issuer size, as this would also reduce the necessary risk adjustment payments for issuers with higher risk enrollees and thereby undermine the effectiveness of the risk adjustment program. We continue to evaluate additional information we may provide States and issuers that would not result in sharing issuers' proprietary information. Last year, we provided interim risk adjustment reports for credible States, as well as final State averages by risk pool, including risk scores, in an appendix to the June 30 Summary Report.[36]

(8) Risk Adjustment Issuer Data Requirements (§ 153.610)

In the 2014 Payment Notice, HHS established an approach for obtaining the necessary data for reinsurance and risk adjustment calculations through a distributed data collection model that prevented the transfer of individuals' personally identifiable information (PII). Under § 153.700, each issuer must establish an EDGE server through which it provides HHS access to enrollment, claims, and encounter data. To safeguard enrollees' privacy, each issuer must establish a unique masked enrollee identification number for each enrollee, and may not include PII in such masked enrollee identification number. Under the EDGE server approach issuers currently provide plan-level data to HHS.

The lack of more granular data under this approach limits HHS's ability to use data from risk adjustment covered plans to improve the risk adjustment model recalibration. As we discussed in the White Paper, access to enrollee-level data with masked enrollee IDs would permit HHS to recalibrate the risk adjustment model using actual data from issuers' individual and small group populations, as opposed to the MarketScan® commercial database that approximates individual and small group market populations, while continuing to safeguard the privacy and security of protected health information (PHI). Therefore, beginning as soon as the 2019 benefit year, while maintaining the underlying goals of the distributed data approach, including information privacy and security, we proposed to recalibrate the risk adjustment model using masked, enrollee-level EDGE server data from the 2016 benefit year. A separate report would be run on issuers' EDGE servers to access select data elements in the enrollee, medical claim, pharmacy claim and supplemental diagnosis files, with masked elements for each of enrollee ID, plan/issuer ID, rating area, and State. This approach would allow for the creation of a masked, enrollee-level dataset, avoiding, for example, the collection of information such as the enrollee ID, the plan ID, the issuer ID, rating area, State, or the EDGE server from which the data was extracted. HHS would provide additional information regarding the data elements it would collect and the related process considerations in future guidance.

HHS would use the dataset to recalibrate the risk adjustment model and inform development of the AV Calculator and Methodology, which HHS releases annually, to describe how issuers of non-grandfathered health plans in the individual and small group markets are to calculate AV for purposes of determining metal levels. We also believed the data could be a valuable source for calibrating other HHS programs in the individual and small group markets and creating a public use file to help governmental entities and independent researchers better understand these markets. After fully considering the comments received, we are finalizing our proposal to extract and use the EDGE server data in this manner to help update the risk adjustment methodology and the AV Calculator, which we aim to do for the 2019 benefit year. We will also consider using these data in the future for calibrating other HHS programs in the individual and small group markets and creating a public use file.

We believe that our approach described above, which minimizes the burden for issuers by only requiring them to execute a new EDGE command for the report to be run on their EDGE servers, permits important improvements to the HHS-operated risk adjustment program while continuing to safeguard privacy and security. We are finalizing the enrollee-level data collection as proposed.

[36] Appendix to the June 30 Summary Report. Available at *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Appendix-A-to-June-30-2016-RA-and-RI-Report-5CR-063016.xlsx.*

Comment: A few commenters strongly disagreed with the proposal to not collect information about the specific issuer or EDGE server, stating that more identifiable information could be useful not only in updating the risk adjustment model but also in helping ensure that issuers are fully complying with critical Exchange requirements and individual and small group market reforms, examining changes in the relative health of enrollees in a plan over time, and evaluating the presence of favorable selection among issuers.

Response: We appreciate that identifiable data could be useful in analyzing program data to support more targeted improvements, and to conduct substantive program oversight. However, we believe that our proposed approach will allow us to recalibrate the HHS risk adjustment models. Further we note that in future years, we could also derive general socioeconomic status or demographic information at the plan- or issuer-level to make adjustments to the demographic variables or the induced demand factor in the risk adjustment models without jeopardizing the issuers' proprietary information or individuals' privacy.

Comment: Most commenters supported using enrollee-level EDGE data to recalibrate the HHS risk adjustment models, as proposed. One commenter emphasized that the calibration of risk factors based on actual data from the individual market will more accurately compensate issuers for special enrollment period enrollees. One commenter supported the use of EDGE enrollee-level data for risk adjustment recalibration, as EDGE data reflects the actual risk adjustment program population and is significantly more meaningful than MarketScan® data for purposes of risk adjustment; however, the commenter requested that since 2016 benefit year data would not adequately reflect the most current risk adjustment population for benefit year 2019 risk adjustment, HHS should use 2018 EDGE data for 2019 recalibration. Commenters encouraged HHS to incorporate EDGE data as soon as possible, or beginning for 2017 or 2018 benefit year risk adjustment recalibration. Some commenters requested that HHS delay this EDGE data collection for the next 3 years to first assess the other changes to the HHS risk adjustment models. Other commenters suggested that HHS take steps to ensure that the EDGE data is accurate and complete for all issuers, including through stakeholder collaboration, to understand if a slower schedule or delayed implementation is needed until the 2020 benefit year.

Response: We clarify that EDGE data for a particular benefit year is not available until after the data submission deadline in the year following the benefit year. The 2016 benefit year EDGE data, which will be submitted in the spring of 2017, will be the next benefit year for which we will be able to collect this data to recalibrate the risk adjustment model for the 2019 benefit year, based on our policy finalized above to provide for final risk adjustment model coefficients before rate-setting for the applicable benefit year. The 2016 benefit year EDGE data will be the most complete and recent EDGE data available.

Comment: One commenter expressed concern that it would not be possible to implement risk adjustment data validation using masked, enrollee-level data.

Response: Risk adjustment data validation is a separate process and we would not conduct data validation or audits using the enrollee-level EDGE data. Enrollees chosen for the risk adjustment data validation sample are identified for audit purposes through a separate process.

Comment: A few commenters expressed concern that this EDGE data collection could lead to disclosure of issuer-proprietary information. We received several suggestions to limit the collection to only data elements absolutely necessary to calibrate the risk adjustment model. Commenters noted that HHS's data collection authority for the individual and small group markets is different than in Medicare. We received several comments stating that HHS should be careful to ensure that the EDGE enrollee-level data is masked and secure and does not divulge enrollees' personal health information or issuers' proprietary data. Commenters encouraged HHS to provide more specifics as to how it will ensure that data is complete and masked. Some commenters requested that HHS release an assessment documenting the need for any proposed data elements prior to collection and consideration of the steps taken to ensure that these elements cannot be used in conjunction with other datasets to identify specific issuers or populations. Commenters noted that neither premiums nor the National Provider Identifier (NPI), as suggested in the White Paper, should be part of this EDGE data collection, as those data elements could allow outside parties to link the enrollee-level data with a particular issuer or enrollee.

Response: We clarify that while we proposed a more extensive list of data elements we might collect through the EDGE enrollee-level data report in the White Paper, we have revised our approach to exclude certain data elements that may be more sensitive. The collection of more granular EDGE data will directly contribute to the improvement of the risk adjustment models and calculations and is authorized as part of HHS's authority under section 1343 of the Affordable Care Act to develop criteria and methods to operate the risk adjustment program.

Comment: Some commenters supported using EDGE data for recalibration, but suggested that HHS consider an alternative approach, such as using EDGE data aggregated up to HCCs to recalibrate the risk adjustment model based on the EDGE data.

Response: We evaluated the possibility of using EDGE data aggregated up to HCCs to recalibrate the risk adjustment models based on the EDGE data. However, we believe that such an approach is not practical. Each year, HHS engages in ongoing analysis for the risk adjustment models, examining and considering a variety of approaches to balance concerns and respond to public comments. An approach like the one suggested by commenters would make such iterative analysis impossible because it would require issuers to rerun EDGE commands on short notice, dozens of times, at HHS's request, and therefore would prevent HHS from developing and executing a risk adjustment model that is as accurate and stable as possible.

Comment: One commenter suggested that the risk adjustment recalibration could take into account the metal level for each enrollee rather than use each enrollee to recalibrate all metal levels. Another commenter requested that the calibrations be done State by State, using State-specific data so that risk adjustment is as accurate as possible. Some commenters noted the challenges inherent in recalibrating based on EDGE data, such as the calibration occurring during the risk adjustment data validation audit process, data completeness if issuers prioritize claims for data submission, and using a single year of data (rather than 3), and questioned whether a blending approach should be considered if there are small sample sizes. Some commenters suggested that HHS perform an analysis comparing the EDGE data (either 2015 or 2016 or both years) to the most recent 3-year MarketScan® data early in the process so health issuers can better anticipate and plan for the upcoming changes, and disclose the volume of data that would be used in the comparison of EDGE data versus MarketScan® data, demonstrating

that the new data is reliable prior to implementation.

Response: We welcome commenters' feedback on appropriate methods for the risk adjustment recalibration. We will take sample sizes into consideration when making these decisions, and will recalibrate at the national level, since we do not intend to collect State information as one of the data elements in the data collection. We will take into account data completeness when determining the recalibration sample, and will consider whether additional, supplemental MarketScan® data is necessary.

Comment: Many commenters supported using the EDGE enrollee-level data to refine the AV Calculator. Another commenter stated that there is not practical utility to the data collection, as the EDGE data will be years old. One commenter strongly supported a prohibition on the use of data gathered from the EDGE servers for purposes other than the recalibration of the risk adjustment models and development of the AV Calculator. A few commenters supported only using this data to recalibrate the risk adjustment model and not for other purposes, and would require that any other uses be established through rulemaking after a period of time.

Many commenters also strongly supported the availability of a public use file derived from these data, which would be an invaluable tool for government entities, including State-based Exchanges and State insurance regulators, as well as independent researchers, to better understand and analyze the individual and small group markets, including the Exchange risk pool. Two commenters encouraged HHS to provide more specifics as to what additional uses of this dataset may be permitted, if any, by HHS or other stakeholders that are granted access. Some commenters opposed the availability of a public use file so that competitors cannot leverage proprietary information, with one opposing at least until HHS and issuers have had an opportunity to assess whether the shift to enrollee-level data is meeting the stated objectives. Several commenters expressed concern about a proposal to create a masked dataset, and expressed strong concern that HHS would create a national database of claims data for all members in the individual and small group markets based on enrollee-level EDGE data, masked or otherwise.

Response: While we believe the EDGE data will be most useful for the risk adjustment recalibration, we believe it could provide valuable information to validate the AV Calculator methodology. We also believe that in the future this data may prove useful in calibrating other HHS programs in the individual and small group markets, and that, after careful analysis, a public use file derived from these data could also prove useful to governmental entities and outside researchers. We are therefore finalizing our approach as described above. A public use file would be de-identified in accordance with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements, would not include proprietary data, and would adhere to HHS rules and policies regarding PHI and PII.

Comment: Several commenters supported the lack of additional burden associated with the proposed data collection approach. Two commenters requested as much notice as possible of any resulting changes to EDGE data submission requirements. One commenter suggested HHS take whatever steps it can to limit the administrative burden imposed on issuers and their vendors. One commenter encouraged HHS to engage with stakeholders to collaborate on the most effective approaches to aggregating and using EDGE server data. One commenter recommended that HHS consider how to gather and incorporate data on prescription drug utilization collected by Electronic Health Records, which may be more reliable and complete than claims data alone. One commenter requested additional information on how HHS intends to collect the necessary data for inclusion of drug data in the risk adjustment model for 2018 onwards. Other commenters expressed concern that collecting enrollee-level EDGE data will require issuers to remake the EDGE server, retrain EDGE submitters, establish additional data warehousing capabilities for the enrollee-level data, and perform analyses on the risk adjustment model requirements. Another commenter requested that HHS produce a detailed cost estimate of the changes necessary to build this capacity and contrast this against projected refinements to the model. One commenter stated that HHS's proposal would expand the data requested through the EDGE servers, impose new record-keeping burdens on issuers, and collect proprietary data.

Response: As we noted in the Information Collection Requirements section, the report that HHS will send for issuers to run on their EDGE servers will collect data that already exists on issuers' EDGE servers, including pharmacy claim data, and will not result in additional burden to issuers of risk adjustment covered plans. This data collection will not require issuers to remake the EDGE server, retrain EDGE submitters, or establish additional data warehousing capabilities for the enrollee-level data, as this data already exists on their EDGE servers. Further, there is no additional cost for the data collection, as the report will be built by HHS. When the command is sent to issuers' EDGE servers, they will simply need to execute the command, consistent with the current data collection process. Issuers will not be identified, so no proprietary information will be collected.

Comment: One commenter requested that HHS publish the EDGE data collection for public comment under the requirements of the Paperwork Reduction Act, so that issuers have a meaningful opportunity to comment on the practical utility and burden of the data collection.

Response: We will update our data collection for public comment under the requirements of the Paperwork Reduction Act following the finalization of this rule.

Comment: One commenter recommended that HHS use EDGE server data to help meet the Affordable Care Act's section 2715A transparency requirements.

Response: The type of data required of plans under the transparency requirements differs from the data issuers make available on EDGE servers for reinsurance and risk adjustment calculations. We have previously described how we intend to collect information for the transparency requirements for Exchange plans. See Transparency in Coverage Reporting by Qualified Health Plan Issuers (CMS–10572).[37]

(9) Risk Adjustment User Fee (§ 153.610(f))

As noted above, if a State is not approved to operate or chooses to forgo operating its own risk adjustment program, HHS will operate risk adjustment on the State's behalf. As described in the 2014 Payment Notice, HHS's operation of risk adjustment on behalf of States is funded through a risk adjustment user fee. Section 153.610(f)(2) provides that an issuer of a risk adjustment covered plan, as defined in § 153.20, must remit a user fee to HHS equal to the product of its

[37] Transparency in Coverage Reporting by Qualified Health Plan Issuers. April 29, 2016. Available at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReduction Actof1995/PRA-Listing-Items/CMS-10572.html?DLPage=1&DLEntries=10&DLFilter =CMS%20-*.

monthly enrollment in the plan and the per enrollee per month risk adjustment user fee specified in the applicable annual payment notice.

To promote operational efficiency, we proposed to amend § 153.610(f)(2) to revise the calculation of the risk adjustment user fee to be equal to the product of an issuer's billable monthly enrollment (billable member months) and the per enrollee per month risk adjustment user fee specified in the annual payment notice. Billable member months exclude children who do not count toward family rates or family policy premiums.[38] This revision to base the total risk adjustment user fee on billable member months rather than enrollment member months ensures consistency with calculating risk adjustment user fees based on premium revenue generated by issuers, which aligns with the FFE user fee policy. This change will not affect the PMPM risk adjustment user fee rate due to the small relative difference between billable member months and enrollee member months. Therefore, we are finalizing our proposal to implement this change beginning for the 2016 benefit year risk adjustment user fee collection, which will be collected in the summer of 2017, maintaining the user fee rate set in the 2016 and 2017 Payment Notices, respectively.

Comment: Commenters supported changing the risk adjustment user fee charge to be based on billable member months.

Response: We are finalizing this policy as proposed beginning for the 2016 benefit year risk adjustment user fee collection.

Additionally, in the proposed rule, we noted that OMB Circular No. A–25R establishes Federal policy regarding user fees, and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. The risk adjustment program will provide special benefits as defined in section 6(a)(1)(b) of OMB Circular No. A–25R to issuers of risk adjustment covered plans because it will mitigate the financial instability associated with potential adverse risk selection. The risk adjustment program will also contribute to consumer confidence in the health insurance industry by helping to stabilize premiums across the individual and small group health insurance markets.

In the 2017 Payment Notice, we estimated Federal administrative expenses of operating the risk adjustment program to be $1.56 per enrollee per year, or $0.13 PMPM, based on our estimated contract costs for risk adjustment operations. For the 2018 benefit year, we proposed to use the same methodology to estimate our administrative expenses to operate the program. These contracts cover development of the model and methodology, collections, payments, account management, data collection, data validation, program integrity and audit functions, operational and fraud analytics, stakeholder training, and operational support. To calculate the user fee, we divided HHS's projected total costs for administering the risk adjustment programs on behalf of States by the expected number of billable member months in risk adjustment covered plans (other than plans not subject to market reforms and student health plans, which are not subject to payments and charges under the risk adjustment methodology HHS uses when it operates risk adjustment on behalf of a State) in HHS-operated risk adjustment programs for the benefit year.

In the proposed rule, we estimated that the total cost for HHS to operate the risk adjustment program on behalf of States for the 2018 benefit year will be approximately $35 million, and that the risk adjustment user fee would be $0.12 PMPM.[39] However, in light of updated cost estimates for risk adjustment-related contracts and expected year-to-year cost-based inflation, we now expect the total cost for HHS to operate the risk adjustment program in 2018 on behalf of States to be approximately $40 million, and are finalizing the risk adjustment user fee rate at $1.68 per billable enrollee per year or $0.14 PMPM.

Comment: Commenters supported the proposed risk adjustment user fee rate. A few commenters pointed out an error in calculating the annualized risk adjustment user fee rate in the proposed rule.

Response: The correct proposal was $0.12 PMPM or $1.44 per billable enrollee per year, but with updated estimates, we are finalizing a slightly higher user fee rate. The total risk adjustment program costs for the 2018 benefit year will be $40 million, based on updated contracts through contract rebids that occurred since the publication of the proposed rule and expected year-to-year cost-based inflation. Based on this update, we are finalizing a user fee rate of $1.68 per billable enrollee per year or $0.14 PMPM for 2018 and future benefit years (until updated through rulemaking).

(10) Data Validation Requirements When HHS Operates Risk Adjustment (§ 153.630)

HHS will conduct risk adjustment data validation in any State where HHS is operating risk adjustment on a State's behalf under § 153.630. The purpose of risk adjustment data validation is to ensure issuers are providing accurate high-quality information to HHS, which is crucial for the proper functioning of the risk adjustment program. Risk adjustment data validation consists of an initial validation audit and a second validation audit. Under § 153.630, each issuer of a risk adjustment covered plan must engage an independent initial validation audit entity. The issuer provides demographic, enrollment, and medical record documentation for a sample of enrollees selected by HHS to its initial validation audit entity for data validation.

i. Materiality Threshold for Risk Adjustment Data Validation

HHS has been evaluating the burden associated with the risk adjustment data validation program, particularly considering the fixed costs associated with hiring an initial validation audit entity and submitting results to HHS, which may be a large portion of some issuers' administrative costs. Beginning for the 2017 benefit year risk adjustment data validation program, HHS proposed to implement a materiality threshold, meaning that issuers that fall below a certain threshold would not be required to conduct risk adjustment data validation each year. We proposed to use a threshold of total premiums of $15 million. Issuers at or below this threshold would not be subject to annual initial validation audit requirements. We estimate that issuers above this threshold represent risk adjustment covered plans that cover approximately 98.5 percent of membership nationally and as such, annual audit of issuers at or below the threshold is not material for purposes of risk adjustment data validation.

Because risk adjustment data validation error rates are applied to the subsequent year's data, we also sought comment on whether to base the participation requirement metric on the benefit year or the subsequent benefit year. On the one hand, risk adjustment data validation is measuring the accuracy of risk scores from the benefit year. On the other hand, risk adjustment data validation results directly adjust

[38] See 78 FR 15432.

[39] We note that in the proposed rule we had incorrectly stated the annual billable enrollee risk adjustment user fee rate as $1.32, when it should have been $1.44 per billable enrollee per year, however the $0.12 PMPM was accurately stated in the proposed rule.

the risk adjustment transfers of issuers participating in risk adjustment in the following benefit year.

As for issuers that fall below the materiality threshold, we proposed that these issuers would be subject to random and targeted sampling. We proposed that the random sampling would include issuers below the threshold being subject to an initial validation audit approximately every 3 years, barring any risk-based triggers that would warrant annual participation. We proposed that potential risk-based metrics we would consider when selecting issuers at or below this threshold for more frequent initial validation audits would include the issuer's prior risk adjustment data validation results and material changes in risk adjustment data submission, as measured by our quality metrics. We noted that, even if an issuer is exempt from initial validation audit requirements using the proposed materiality threshold, HHS may require issuers to make records available for review or to comply with an audit by the Federal government under § 153.620.

Finally, we proposed that issuers not materially affecting risk adjustment data validation that are not required to perform an initial validation audit would still have their risk adjustment transfers adjusted based on an error rate. We proposed using an error rate for an issuer not subject to an initial validation audit in a particular year that could be the average negative error rate nationally, or the average negative error rate within a State, or its error rate in past audits.

We sought comment on these proposals. In light of the comments received, beginning with the 2017 benefit year of risk adjustment data validation, we are finalizing the proposed materiality threshold of total premiums of $15 million based on the premiums in the benefit year being validated. Additionally, we are finalizing our proposal that issuers below the materiality threshold for risk adjustment data validation will be subject to a default error rate equal to the lower of the average negative error rate nationally, or the average negative error rate within a State. We will also exercise enforcement discretion for risk adjustment data validation for the 2016 benefit year for issuers below this materiality threshold in the same fashion.

Comment: Numerous commenters supported the materiality threshold for risk adjustment data validation beginning in the 2017 benefit year of total premiums of $15 million. A few commenters opposed a materiality threshold, stating that not auditing all issuers every year does not promote a level playing field. One commenter requested that HHS establish a materiality threshold beginning with the 2018 benefit year. Other commenters agreed with HHS's materiality threshold as long as exempted issuers would be subject to random and targeted sampling that would include issuers below the threshold being subject to an initial validation audit approximately every 3 years. Another commenter requested that HHS monitor the variance between these low enrollment plans and their markets to ensure data integrity.

Response: HHS is finalizing the materiality threshold of total premiums of $15 million beginning with the 2017 benefit year, as proposed, because we agree with the numerous commenters that this threshold would reduce the burden of the risk adjustment data validation process for issuers that do not materially impact risk adjustment transfers. As set forth in the proposed rule and finalized here, although an issuer may not be required to conduct risk adjustment data validation each year, the issuers would be subject to random and targeted sampling that would include issuers below the threshold being subject to an initial validation audit approximately every 3 years.

Comment: Some commenters supported a materiality threshold but requested that HHS establish a threshold higher than total premiums of $15 million. Other commenters requested that HHS establish a threshold of 12,000 billable member months. One commenter encouraged HHS to ensure that the materiality threshold is set so that no more than 2 percent of membership nationally is exempt.

Response: We believe that setting a threshold representing risk adjustment covered plans that cover approximately 1.5 percent of membership nationally promotes the goals of the risk adjustment data validation process while also considering the burden of such a process on smaller plans. HHS will monitor this threshold and may propose adjustments to the threshold for future benefit years to ensure that issuers above this threshold represent risk adjustment covered plans that cover approximately 98.5 percent of membership nationally.

Comment: One commenter sought clarification that the premiums included in the materiality threshold are only those for plans subject to risk adjustment.

Response: We agree with the commenter that the premiums included in the materiality threshold are only those for risk adjustment covered plans.

Comment: Several commenters requested that HHS base the materiality threshold on the benefit year being validated and not the subsequent benefit year.

Response: We agree with the commenters, and are finalizing a policy that HHS will base the materiality threshold on the benefit year being validated rather than the subsequent benefit year.

Comment: Numerous commenters supported the application of an error rate to issuers not required to conduct risk adjustment data validation. Other commenters suggested that those issuers should be exempt from having their transfers adjusted based on an error rate. The commenters supporting the error rate requested that HHS use the State average error rate for issuers that do not meet the materiality threshold. One commenter requested additional information about the error rate.

Response: We are finalizing a default error rate equal to the lower of the average negative error rate nationally, or the average negative error rate within a State. We believe this protects issuers not required to conduct risk adjustment data validation from large error rates of large issuers in a State, while not permitting them to unduly benefit from this exemption. We clarify that this default error rate would also apply to ''new entrant'' issuers in a benefit year beginning with the 2016 benefit year whose transfers would be adjusted based on prior year risk adjustment data validation results, which the new entrant issuer was not subject to. For example, the issuer who newly enters the market in the 2017 benefit year would have its June 30, 2018 transfers for the 2018 benefit year adjusted by the same 2017 risk adjustment data validation default error rate applied to issuers not required to conduct 2017 risk adjustment data validation for the 2017 risk adjustment data validation error rate application and payment adjustments on 2018 transfers.

ii. Inclusion of Pharmacy Claims in Risk Adjustment Data Validation

Beginning with the 2018 benefit year, as discussed above, the proposed HHS risk adjustment methodology would take into account prescription drug utilization for purposes of determining an enrollee's risk score. HHS proposed to use a hybrid model that employs prescription drug data to supplement diagnostic data by serving as a proxy for a missing diagnosis in cases where

diagnostic data are likely to be incomplete and as an indicator of the severity of an enrollee's illness. We proposed to require that, with respect to validation of prescription drug utilization of sampled enrollees, an issuer must provide an initial validation audit entity all paid pharmacy claims for an enrollee, against which the initial validation audit entity will validate the associated prescription drug class in the HHS risk adjustment methodology and the impact on the enrollee's risk score. Therefore, we proposed to amend the first sentence of § 153.630(b)(7)(ii) to include enrollees' paid pharmacy claims. In light of the comments received, we are finalizing this provision as proposed.

Comment: Several commenters supported this proposal. One commenter, while in support of the proposal, noted that requiring issuers to provide prescription drug data to initial validation audit entities will not serve to prevent gaming of prescription drugs in the risk models. Additionally, commenters requested more information, including knowing in advance the type of evidence that will be required and the format of the data used for the validation audit.

Response: We are finalizing this policy as proposed. As we noted in our discussion of including prescription drugs in the risk adjustment models, we intend to evaluate prescription drug utilization patterns prior to, during, and after the 2018 benefit year. We will provide guidance on the type of evidence that will be required and the format of the data used for this validation audit in future guidance.

iii. Risk Adjustment Data Validation Discrepancy and Administrative Appeals Process

Under § 153.630(d), an issuer may appeal the findings of a second validation of a risk score error rate to its risk adjustment payments and charges. In the 2015 Payment Notice, we stated that we would ''provide additional guidance on the appeals process and schedule in future rulemaking.'' [40] As we noted in the 2015 Payment Notice, HHS will not permit an issuer to appeal the results of the initial validation audit, as the initial validation audit entity is under contract with the issuer and HHS does not produce the initial validation audit results. We are amending § 153.630(d) to clarify that an issuer may appeal the findings of a second validation audit or the calculation of a risk score error rate. We make this clarification to distinguish the calculation of a risk score error rate from the application of a risk score error rate since the calculation is a separate reason on which an issuer could appeal. We further clarify that if an issuer intends to appeal the application of a risk score error rate to its risk adjustment transfer amounts, HHS will deem this a risk adjustment payment or charge amount appeal under § 156.1220(a)(1)(ii). In this final rule, we also finalize an interim and final discrepancy reporting process for the risk adjustment data validation program and we codify the process by which an issuer may file an appeal of the findings of a second validation audit or the calculation of a risk score error rate.

First, we finalize an interim discrepancy reporting process by which an issuer must confirm the risk adjustment data validation initial audit sample provided by HHS under § 153.630(b)(1) or file a discrepancy report. We are amending § 153.630 by removing the introductory language and adding paragraph (d)(1) to provide that in the manner set forth by HHS, within 15 calendar days of notification of the initial validation audit sample set forth by HHS, an issuer must confirm the sample or file a discrepancy report to dispute the HHS risk adjustment data validation initial validation audit sample set forth by HHS. In light of the timing of this interim discrepancy reporting process, we are not permitting issuers to appeal the resolution of any interim discrepancy disputing the initial validation audit sample. We are also requiring confirmation of the sample, in the form of an attestation, in order to ensure that issuers thoroughly review the initial validation audit sample determined by HHS.

Second, we finalize a final discrepancy reporting process, by which an issuer must confirm the findings of the second validation audit or the calculation of a risk score error rate, or notify us if the issuer identifies a discrepancy with the findings of a second validation audit or the calculation of a risk score error rate. We are adding paragraph (d)(2) to § 153.630 to provide that in the manner set forth by HHS, an issuer must attest to or report a discrepancy within 30 calendar days of notification of the findings of a second validation audit or the calculation of a risk score error rate to dispute the findings of a second validation audit or the calculation of a risk score error rate.

As we will discuss in further detail in the preamble to § 156.1220(a), we are also requiring issuers to report a discrepancy if the issue is identifiable prior to filing a request for reconsideration as set forth in § 156.1220. As such, we are amending § 156.1220(a)(4)(ii), to provide that notwithstanding § 156.1220(a)(1), a reconsideration with respect to a processing error by HHS, HHS's incorrect application of the relevant methodology, or HHS's mathematical error may be requested only if, to the extent the issue could have been previously identified by the issuer to HHS under § 153.630(d)(2) or § 153.710(d)(2), it was so identified and remains unresolved.

Third, we are amending § 153.630 to add paragraph (d)(3) to clarify the process by which an issuer can appeal the findings of a second validation audit or the calculation of a risk score error rate. We are requiring issuers to use the administrative appeals process set forth in § 156.1220.

In light of the comments received, we are finalizing the provisions as proposed.

Comment: Many comments supported the risk adjustment data validation discrepancy reporting and appeals processes. However, some of these commenters requested that HHS provide issuers 30 calendar days to file interim discrepancy reports.

Response: We are finalizing the provisions and timeframes as proposed. We are finalizing a 15 calendar day timeframe to report interim discrepancies related to the initial validation audit sample in order to provide initial validation audit entities maximum time to perform the initial validation audit.

Comment: One commenter requested that HHS clarify who within an issuer would provide the attestation during the interim and final attestation or discrepancy reporting process.

Response: HHS will provide guidance on who can provide the attestation during the interim and final attestation or discrepancy reporting processes. We note that, as with all attestations, it must be an individual who can legally and financially obligate the company.

7. Part 154—Health Insurance Issuer Rate Increases: Disclosure and Review Requirements

a. Definitions (§ 154.102)

We proposed to revise the definition of ''product'' in § 154.102 to allow a product to be considered the same product when it is no longer offered by the same issuer, but by a different issuer in the same controlled group, consistent with our proposed interpretation of guaranteed renewability provisions, as discussed in the preamble to § 147.106. We are finalizing the revised definition

[40] 2015 Payment Notice, See 79 FR 13768.

as proposed. For further discussion please see the preamble for §§ 144.103 and 147.106.

8. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

a. Standardized Options (§ 155.20)

In the 2017 Payment Notice, HHS finalized six standardized options (also referred to as Simple Choice plans), one each at the bronze, silver, silver cost-sharing reduction variations, and gold levels of coverage, designed to be similar to the most popular QHPs in the 2015 individual market FFEs. In the proposed 2018 Payment Notice, we proposed to change the standardized options from the 2017 versions in order to reflect changes in QHP enrollment-weighted data from 2015 to 2016 and include SBE–FP QHP enrollment-weighted data; and to comply with various State cost-sharing standards. For the 2018 plan year, HHS proposed three sets of standardized options (see Tables 12, 13, and 14 in the proposed 2018 Payment Notice). The second and third sets of proposed standardized options (Tables 13 and 14) differed from the first set only to the extent necessary to comply with State cost-sharing laws. The second set was designed to work in States that: (1) Require that cost sharing for physical therapy, occupational therapy, or speech therapy be no greater than the cost sharing for primary care visits; (2) limit the cost-sharing amount that can be charged for a 30-day supply of prescription drugs by tier; or (3) require that all drug tiers carry a copayment rather than coinsurance. The third set was designed to work in a State with maximum deductible requirements and other cost-sharing standards.

Like the 2017 standardized options, we proposed that the 2018 standardized options would each have a single provider tier, fixed deductible, fixed annual limitation on cost sharing, four drug tiers, and fixed copayment or coinsurance for a key set of EHB that comprise a large percentage of the total allowed costs for a typical population of enrollees. We proposed these fixed cost-sharing values for in-network care only (we did not propose to standardize cost sharing for out-of-network care).

Unlike the 2017 standardized options, we proposed that the first and second set of 2018 standardized options at the silver, silver cost-sharing reduction variations, and gold levels of coverage, would have a separate medical and drug deductible, reflecting the commonality of this cost-sharing structure among 2016 enrollment-weighted QHPs at these levels of coverage. We proposed to set the drug deductible equal to $0 for the standardized options at the silver 87 percent cost-sharing reduction plan variation, silver 94 percent cost-sharing reduction plan variation, and gold levels of coverage, meaning no deductible would apply to the drugs.

We noted that the bronze standardized options as proposed would rely on finalization of the proposal at § 156.140, which would permit a broader de minimis range for bronze plans.

We also proposed a fourth standardized option at the bronze level of coverage that would qualify as a high deductible health plan (HDHP) under section 223 of the Code, eligible for use with a health savings account (HSA). We noted that under the terms of the Code, the IRS releases the maximum annual limitation on cost sharing and minimum annual deductible for HDHPs annually in the spring, subsequent to the annual HHS notice of benefit and payment parameters rulemaking process. Therefore, we proposed that if any changes to the HDHP standardized option would be required to reflect differences between the HDHP standardized option finalized in the 2018 Payment Notice and the subsequently released maximum annual limitation on cost sharing and minimum annual deductible for HDHPs, HHS would publish those changes in guidance. Accordingly, HHS proposed to amend the definition of ''standardized option'' at § 155.20 to provide that a plan would be a standardized option if it is: (1) A QHP offered for sale through an individual market Exchange with a standardized cost-sharing structure specified by HHS in rulemaking; or (2) an HDHP QHP offered for sale through an individual market Exchange with a standardized cost-sharing structure specified by HHS in guidance issued solely to modify the cost-sharing structure specified by HHS in rulemaking to the extent necessary to align with requirements to qualify as an HDHP under section 223 of the Code and meet HHS AV requirements.

In the proposed rule, we noted that for 2018, the *HealthCare.gov* platform remains unable to provide differential display to State-designed standardized plans that differ from the HHS-designed standardized options. However, we proposed that SBE–FPs may choose to allow HHS-designed standardized options, if offered by issuers in their State, to receive differential display on *HealthCare.gov.* We proposed that an SBE–FP must notify HHS if it elects to have HHS-designed standardized options receive differential display by a date to be specified in guidance, which would be set to provide sufficient time to operationalize the State's decision on *HealthCare.gov.*

In the proposed rule, we sought to accommodate State cost-sharing requirements by designing three sets of standardized options (in addition to a bronze HDHP) and proposed to select for each FFE State one of the three standardized options at each level of coverage that would meet any existing State cost-sharing requirements (plus the HDHP option at the bronze level, if permissible under State cost-sharing standards). We proposed to do the same for each SBE–FP State that notifies HHS that it chooses to have HHS standardized options receive differential display on the *HealthCare.gov* platform. We proposed that these selections would be published in the Final 2018 Payment Notice.

We also noted that many States have oral chemotherapy access laws, which require coverage of oral chemotherapy to be provided at cost-sharing parity with intravenous chemotherapy, or which cap patients' monthly cost sharing for chemotherapy drugs (both oral and intravenous). We proposed to clarify that these chemotherapy access requirements do not conflict with the HHS standardized plan designs because issuers may design benefit packages that comply with both the standardized options' requirements and State oral chemotherapy access laws.

We are finalizing the proposed policies on standardized options and the plan designs in the first, second, and third sets of standardized options as proposed, except for a few modifications, as discussed below.

We are modifying the definition of ''standardized option'' at § 155.20 to provide not only that HDHP QHPs can be modified to the extent necessary to align with the applicable requirements under section 223 of the Code, but that any QHP can be modified to update the cost-sharing structure specified by HHS in rulemaking to the extent necessary to align with the applicable annual limitation on cost sharing and HHS actuarial value requirements. This will permit us to make minor changes to the standardized options to meet legal requirements through guidance implementing this rule, instead of solely through rulemaking.

We are selecting all of the plan designs in the proposed second set of standardized options (Table 11) to apply in the Exchanges in the States of: Arkansas, Delaware Iowa, Kentucky (if the SBE–FP opts in), Louisiana, Missouri, Montana, and New Hampshire. We are selecting all of the plan designs in the proposed third set

of standardized options (Table 12) to apply in the Exchange in the State of New Jersey, but with some modifications to bring them into full compliance with New Jersey's unique State cost-sharing requirements, as discussed below. The States listed above have specific cost-sharing requirements, which the second and third sets of standardized options were designed to accommodate. We are selecting all of the plan designs in the first set of proposed standardized options (Table 10) (except for the HDHP option, which issuers in all States may choose to offer as long as it complies with State requirements governing high deductible health plans) to apply in all other FFEs, and all other SBE–FPs that opt in to differential display of these options.

New Jersey has a $2,500 maximum deductible limitation for plans at all levels of coverage except for bronze, and a $3,000 maximum deductible for plans at the bronze level of coverage. New Jersey also prohibits the use of a separate specialty drug tier. We are thus removing the specialty drug tier from the third set of standardized options. We made other conforming adjustments to ensure that the AVs fall within the de minimis range; and that each of the drug tiers has a different cost-sharing (copayment) value. These changes from the proposed rule remain consistent with the principles and features of standardized options described in the proposed rule. The standardized options finalized in this rule, in Tables 10, 11, and 12 below, apply beginning with the 2018 plan year.

Comment: The majority of commenters were supportive of the proposed policy to continue standardized options into the 2018 plan year. Some commenters requested that standardized options be made a requirement for all QHP issuers, as they are in the SBEs that have implemented standardized plans. These commenters requested that each QHP issuer participating in the 2018 Exchanges be required to offer at least one standardized plan at each level of coverage. A few commenters requested that standardized options be removed altogether, stating that the plans may negatively impact innovation in plan design or limit competition and choice in the Exchanges. A few commenters stated that standardized options are not necessary in many markets due to the participation of only one to two issuers. These commenters requested that if standardized options remain, HHS clarify that they will remain optional for issuers. Some commenters requested that in place of standardized options, HHS instead move to tighten meaningful difference standards.

Response: We continue to believe that standardized options, which issuers may elect to offer, can simplify the consumer shopping experience in many markets and encourage the availability of plan designs with beneficial features (such as pre-deductible services) that may not otherwise exist in certain markets. We are finalizing the proposal for issuers to be able to offer standardized options if they choose. We recognize that the cost-sharing structures in the standardized options may not be appropriate for all issuers or all markets, and we are not requiring issuers to offer standardized options, nor limiting their ability to offer other QHPs, subject to other applicable law. As a result, we do not believe that standardized options will hamper innovation or limit choice.

Comment: Most of the commenters that commented on the proposed standardized options expressed concern about the proposed high out-of-pocket cost for specialty drugs in the first set of standardized options due to the application of coinsurance instead of copayments. Many of these commenters noted that the use of coinsurance makes it more difficult for consumers to calculate their monthly or yearly cost for drugs because plan formularies often lack cost information for specialty drugs. Many commenters noted that consumers with specialty drug needs often face financial difficulty because they must pay their plan's annual limitation on cost sharing within the first few months of the plan year, solely based on their specialty drug spending. Some commenters requested that HHS consider a capped copayment structure for drugs, or a process whereby a consumer would be able to spread his or her drug cost-sharing obligations evenly over the course of twelve months. Several commenters requested that we adopt the drug cost-sharing structure in the second or third set of standardized options in place of the drug cost-sharing structure in the first set of standardized options. Some issuers and SBEs commented that they are moving towards the use of copayments in place of coinsurance in response to consumer feedback. Many commenters requested clarification regarding the meaning of a separate drug deductible set at $0, which was the drug deductible proposed for the 87 and 94 percent silver CSR plan variations and the gold plan in the first set of standardized options. One commenter requested additional clarity regarding the use of the asterisk in the standardized options tables, which is used to mean ''not subject to the deductible,'' and whether it includes both the medical and the drug deductible.

Response: We agree that in some cases coinsurance for specialty drugs may lead to high up-front out-of-pocket spending for consumers with specialty drug needs. However, because we have designed the standardized options to have cost-sharing features similar to those in the most popular (enrollment-weighted) QHPs in the 2016 individual market FFEs and SBE–FPs, we are retaining the proposed coinsurance structure and rates for specialty drugs in the first set of standardized options. The proposed separate medical/drug deductible structure in the proposed first and second set of standardized options was intended to provide cost-sharing protection for patients that require access to specialty drugs by subjecting the drugs to a separate and smaller deductible, rather than subjecting the drugs to a combined medical/drug deductible, which is often in the thousands of dollars. The standardized options with the separate drug deductible set at $0 (the 87 and 94 percent AV silver plan variations and gold plans in the first and second sets of the proposed standardized options) were designed this way for three reasons. First, under cost-sharing reduction rules, the cost-sharing reduction plan variations should carry the same cost-sharing structure as the standard silver plan to avoid a situation where a less generous plan variation has lower cost sharing than a more generous plan variation. Thus, because the proposed standard silver plan in the second and third sets has a separate medical/drug deductible, the cost-sharing reduction variations must also have a separate medical/drug deductible, even if the drug deductible is $0. Second, for a plan with a separate medical/drug deductible, a $0 drug deductible would not accumulate the copayments the consumer pays for drugs towards the medical deductible of the plan. This was the intended plan structure in the proposed rule and is different than a plan with a combined medical/drug deductible where the drug copayments do go towards the medical deductible of the plan because the medical/drug deductible is combined. Third, we proposed this structure in response to confusion regarding the way that coinsurance is applied within the deductible range of a plan under the 2018 AV calculator methodology.[41] We

[41] 2018 AV calculator methodology. Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/index.html#Plan Management.*

are retaining the proposed separate medical/drug deductible structure in the first and second sets of standardized options as well as the proposed separate drug deductible of $0 for certain plans. We are relying on the asterisk (*), which is used to indicate that the cost sharing is not subject to deductible, to convey to consumers when no deductible applies to the drug tiers. We further clarify that the asterisk (*) used in the standardized options tables means that the benefit cost sharing is not subject to any deductible—not a drug deductible, nor a medical deductible, nor a combined medical/drug deductible.

Comment: Many commenters expressed support regarding the cost-sharing structure for physical, occupational, and speech therapy in the proposed second set of standardized options, which sets cost sharing for these services at parity with cost sharing for primary care services (applying copayments not subject to the deductible, instead of coinsurance subject to the deductible). These commenters were also supportive of the cost-sharing structure proposed for these services in the third set of standardized options, which also uses copayments instead of coinsurance, and, with the exception of the bronze plan, does not subject the services to the deductible. Many commenters expressed concern with the cost-sharing structure proposed for these services in the first set of standardized options (coinsurance subject to deductible) noting that it would create substantial issues for consumers that require physical, occupational, or speech therapy, which are often required several times per week for habilitation or rehabilitation. Several commenters requested that we clarify that these benefit categories apply for both rehabilitative and habilitative care. Some commenters requested that we clarify that occupational therapy and physical therapy are separate and distinct services.

Response: We clarify that occupational therapy, physical therapy, and speech therapy categories include services for both habilitation and rehabilitation. Because these services are services that are expected and used for both rehabilitative and habilitative care, we changed the naming of these inputs in both the proposed 2018 AV Calculator and the proposed standardized options for 2018 in order to remove exclusive reference to rehabilitation. We also clarify that occupational and physical therapy are listed together in the AV Calculator and proposed standardized options tables, but that such listing does not indicate that these services are one and the same type of services, but rather that they carry the same cost-sharing rate. We agree that consumers who need to utilize these services multiple times during the month or year may not want to select a plan with these services subject to both a deductible and coinsurance. However, because we have designed the standardized options to have cost-sharing features similar to those in the most popular (enrollment-weighted) QHPs in the 2016 individual market FFEs and SBE–FPs, we are retaining the proposed cost-sharing structure for these types of services in the first set of standardized options.

Comment: Some commenters suggested that the second set of standardized options should be used for all States, not just those that have cost-sharing standards. They suggested that a single national set of standardized options would prevent confusion for consumers that move from one State to a different State with different HHS standardized options and would be less burdensome for issuers that participate in multiple States to develop a single set of standardized options, rather than two or three sets. They also commented that by designing standardized options for some States to include co-insurance for some benefits while using copayments for those benefits in other States, HHS would be establishing a two-tiered Exchange system, which would be more difficult to measure.

Response: We understand that the second set of standardized options would comply with cost-sharing standards in all States, except for one—New Jersey—which, as noted, has very specific requirements addressed in the proposed third set of standardized options. However, based on the analysis of median cost-sharing features of enrollment-weighted QHPs in each State, we believe that the set of standardized options selected for each State will reflect the principles of standardized options described in the 2017 Payment Notice without increasing premium rates for consumers. We note that the bronze HDHP standardized option will remain an option for issuers in all States, if permitted in the State.

Comment: Some commenters requested clarity on how issuers can comply with both State requirements related to oral chemotherapy and the standardized options' cost-sharing requirements.

Response: We clarify that where an issuer in a State that requires cost sharing for chemotherapy drugs different from the cost sharing specified in the standardized options' drugs tiers offers a plan that complies with the standardized options plan designs, except for any deviations to comply with the State's chemotherapy drug requirements, the plan will still be considered to be in compliance with the standardized options requirements. Issuers are expected to clearly indicate the State-required alternative cost sharing for chemotherapy drugs in plan formularies. This approach gives issuers the ability to price the drug tiers at the cost sharing in the standardized designs, but alter cost sharing for the chemotherapy drugs that have specific cost-sharing requirements based on State law.

Comment: Some commenters requested clarity regarding whether in the 2018 proposed standardized options issuers would have the option to create an additional lower-cost drug tier, as was explicitly permitted in the 2017 standardized options. Several commenters requested that the additional lower-cost tier be specifically designated for drugs that are available at no cost sharing, or fall under the preventive services category. Some commenters requested that we clarify that standardized options must cover preventive services at no cost sharing. Some commenters requested that we clarify that the copayment amounts for the drug tiers are for 30-day retail fills. Some commenters requested that we clarify that preferred and non-preferred pharmacies are permitted with differential cost sharing and that differential cost sharing is permitted for mail-service and retail pharmacies, such that the standardized cost sharing would represent cost sharing at non-preferred retail pharmacies, with lower cost sharing available at preferred retail or mail-service pharmacies.

Response: We offer the following clarifications. We clarify that each copayment amount listed for the drug tiers in all standardized options is for at least a 30-day prescription fill at retail pharmacies. We clarify that issuers (or their pharmacy benefit managers) may offer a lower cost-sharing rate for mail order prescription fills, as is the most common practice in the current market. We clarify that, similar to the standardized options for 2017, issuers may create a single, additional, lower cost generics tier for standardized options. We also clarify that all standardized options must provide coverage for certain preventive services, including drugs as applicable, and may not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible) with respect to those items and services (see regulations at § 147.130 for rules

regarding coverage of preventive health services).

Comment: One commenter requested additional clarity regarding the number of physician tiers issuers are permitted to use in standardized options.

Response: We clarify that standardized options are limited to a single in-network tier. We do not standardize cost sharing for out-of-network coverage—therefore the cost-sharing structure for care obtained out-of-network can be set by the issuer of the standardized plan, subject to applicable Federal and States rules and regulations governing out-of-network coverage.

Comment: Some commenters expressed concern about the methodology of basing standardized cost-sharing design on enrollment-weighted QHP data, and requested that we incorporate other factors into plan designs.

Response: We examined 2016 enrollment-weighted FFE and SBE–FP QHP data to ensure that the cost-sharing values selected for standardized options were between the 25th and 75th percentile of cost-sharing values for each standardized cost-sharing feature based on enrollment, and generally sought to mirror the requirements at the 50th percentile. However, our standardized designs also take into account a number of other principles, such as deductible-exempt services, and copayments in place of coinsurance where feasible, as detailed in the proposed 2017 Payment Notice.

Comment: Some consumers supported differential display of standardized options, requesting HHS adopt preferential display with standardized options sorting to the top of the list on *HealthCare.gov*, with premiums as a secondary sorting mechanism. Other commenters disagreed with any differential display, requesting that premiums be the default sorting mechanism.

Response: The differential display of standardized options for 2017 has been implemented in a way that will make plan shopping easier, while educating consumers about the cost-sharing features of standardized options. Consumers are able to filter to view only standardized options; however, standardized options will not automatically sort to the top on *HealthCare.gov* in 2017. Display of standardized options for 2018 will be based on additional consumer testing and consumer experiences with standardized options and comparison shopping for coverage in the 2017 Plan Year.

Comment: Some commenters supported the proposal for a standardized bronze HDHP. Some commenters requested that we also design a standardized silver and gold HDHP. Other commenters raised concerns about HDHPs in general and, in particular, noted that many consumers with HDHPs never actually establish HSAs, which could make it difficult for them to afford out of pocket expenses when care is needed. These commenters requested that HHS raise awareness of HSAs and facilitate enrollees' ability to take advantage of that benefit.

Response: We are finalizing the proposed standardized bronze HDHP. We will consider comments regarding the need for consumer education with respect to HSAs and HDHPs. We are not developing standardized HDHP options at other levels of coverage at this time, but could do so in the future if we see significant demand for those products.

Comment: Some commenters requested additional clarity regarding the three proposed sets of standardized options. Some requested whether in some States, there would be more than one set of standardized options that issuers would have the choice to offer. Others raised questions regarding whether there could be a State that has both cost-sharing laws as covered under the second proposed set of standardized options as well as deductible maximums as covered under the third proposed set of standardized options.

Response: We clarify, that in each applicable State, there will be one set of standardized options, including one bronze-level, one silver-level, one 73 percent AV silver plan variation, one 87 percent AV silver plan variation, one 94 percent AV silver plan variation, one gold standardized option, and one bronze HDHP option that issuers in the State would have the option to offer. No States have been identified to have cost-sharing requirements that would require a plan to comply with limitations reflected in both the second proposed set of standardized options as well as the third proposed set of standardized options. The only State with applicable requirements for which the third set of standardized options, modified as described above, would be required is the State of New Jersey.

TABLE 10—2018 FINAL STANDARDIZED OPTIONS—SET ONE

	Bronze	HSA-eligible bronze HDHP	Silver	Silver 73% CSR plan variation	Silver 87% CSR plan variation	Silver 94% CSR plan variation	Gold
Actuarial Value (%)	62.68%	61.97%	71.05%	73.95%	87.61	94.69	80.65%
Deductible (Med/Rx)	$6,650	$6,000	$3,500/ $500	$3,000/ $200	$700/$0	$250/$0	$1,400/$0
Annual Limitation on Cost Sharing	$7,350	$6,000	$7,350	$5,850	$2,450	$1,250	$5,000
Emergency Room Services	40%	No charge after deductible	20%	20%	20%	5%	20%
Urgent Care	$75 (*)	No charge after deductible	$75 (*)	$75 (*)	$40 (*)	$25 (*)	$60 (*)
Inpatient Hospital Services	40%	No charge after deductible	20%	20%	20%	5%	20%
Primary Care Visit	$35 (*)	No charge after deductible	$30 (*)	$30 (*)	$10 (*)	$5 (*)	$20 (*)
Specialist Visit	$75 (*)	No charge after deductible	$65 (*)	$65 (*)	$25 (*)	$10 (*)	$50 (*)
Mental Health/Substance Use Disorder Outpatient Office Visit.	$35 (*)	No charge after deductible	$30 (*)	$30 (*)	$10 (*)	$5 (*)	$20 (*)
Imaging (CT/PET Scans, MRIs)	40%	No charge after deductible	20%	20%	20%	5%	20%
Speech Therapy	40%	No charge after deductible	20%	20%	20%	5%	20%
Occupational Therapy/Physical Therapy.	40%	No charge after deductible	20%	20%	20%	5%	20%
Laboratory Services	40%	No charge after deductible	20%	20%	20%	5%	20%
X-rays and Diagnostic Imaging **	40%	No charge after deductible	20%	20%	20%	5%	20%
Skilled Nursing Facility	40%	No charge after deductible	20%	20%	20%	5%	20%
Outpatient Facility Fee (for example, Ambulatory Surgery Center).	40%	No charge after deductible	20%	20%	20%	5%	20%

TABLE 10—2018 FINAL STANDARDIZED OPTIONS—SET ONE—Continued

	Bronze	HSA-eligible bronze HDHP	Silver	Silver 73% CSR plan variation	Silver 87% CSR plan variation	Silver 94% CSR plan variation	Gold
Outpatient Surgery Physician/Surgical Services.	40%	No charge after deductible	20%	20%	20%	5%	20%
Generic Drugs	$35 (*)	No charge after deductible	$15 (*)	$15 (*)	$5 (*)	$3 (*)	$10 (*)
Preferred Brand Drugs	35%	No charge after deductible	$50 (*)	$50 (*)	$25 (*)	$5 (*)	$40 (*)
Non-Preferred Brand Drugs	40%	No charge after deductible	$100 (*)	$100 (*)	$50 (*)	$10 (*)	$75 (*)
Specialty Drugs	45%	No charge after deductible	40%	40%	30%	25%	30%

(*) = not subject to the deductible.
** **Note:** Excludes x-rays and diagnostic imaging associated with office visits (except for high-deductible health plans (HDHPs).

TABLE 11—2018 FINAL STANDARDIZED OPTIONS—SET TWO—APPLICABLE IN ARKANSAS, DELAWARE, IOWA, KENTUCKY (IF THE SBE–FP OPTS IN), LOUISIANA, MISSOURI, MONTANA, AND NEW HAMPSHIRE

	Bronze	Silver	Silver 73% CSR plan variation	Silver 87% CSR plan variation	Silver 94% CSR plan variation	Gold
Actuarial Value (%)	62.79%	71.03%	73.88%	87.70	94.68	80.60%
Deductible (Med/Rx)	$6,650	$3,500/$500 Rx	$3,000/$200 Rx	$700/$0	$250/$0	$1,400/$0
Annual Limitation on Cost Sharing.	$7,350	$7,350	$5,850	$2,450	$1,250	$5,000
Emergency Room Services.	40%	20%	20%	20%	5%	20%
Urgent Care	$75 (*)	$75 (*)	$75 (*)	$40 (*)	$25 (*)	$60 (*)
Inpatient Hospital Services	40%	20%	20%	20%	5%	20%
Primary Care Visit	$35 (*)	$30 (*)	$30 (*)	$10 (*)	$5 (*)	$20 (*)
Specialist Visit	$75 (*)	$65 (*)	$65 (*)	$25 (*)	$10 (*)	$50 (*)
Mental Health/Substance Use Disorder Outpatient Office Visit.	$35 (*)	$30 (*)	$30 (*)	$10 (*)	$5 (*)	$20 (*)
Imaging (CT/PET Scans, MRIs).	40%	20%	20%	20%	5%	20%
Speech Therapy	$35 (*)	$30 (*)	$30 (*)	$10 (*)	$5 (*)	$20 (*)
Occupational Therapy/ Physical Therapy.	$35 (*)	$30 (*)	$30 (*)	$10 (*)	$5 (*)	$20 (*)
Laboratory Services	40%	20%	20%	20%	5%	20%
X-rays and Diagnostic Imaging **.	40%	20%	20%	20%	5%	20%
Skilled Nursing Facility	40%	20%	20%	20%	5%	20%
Outpatient Facility Fee (e.g., Ambulatory Surgery Center).	40%	20%	20%	20%	5%	20%
Outpatient Surgery Physician/Surgical Services.	40%	20%	20%	20%	5%	20%
Generic Drugs	$35 (*)	$15 (*)	$15 (*)	$5 (*)	$3 (*)	$10 (*)
Preferred Brand Drugs	$40 (copay applies only after deductible).	$50 (*)	$50 (*)	$25 (*)	$5 (*)	$40 (*)
Non-Preferred Brand Drugs.	$45 (copay applies only after deductible).	$100 (*)	$100 (*)	$50 (*)	$10 (*)	$75 (*)
Specialty Drugs	$50 (copay applies only after deductible).	$150 (copay applies only after drug deductible).	$150 (copay applies only after drug deductible).	$75 (*)	$20 (*)	$100 (*)

(*) Not subject to deductible.
(**) Excludes x-rays and diagnostic imaging associated with office visits.

TABLE 12—2018 FINAL STANDARDIZED OPTIONS NEW JERSEY

	Bronze	Silver	Silver 73% CSR plan variation	Silver 87% CSR plan variation	Silver 94% CSR plan variation	Gold
Actuarial Value (%)	64.84%	71.53%	73.63%	87.61%	94.53%	80.80%
Deductible	$3,000	$2,500	$2,500	$700	$250	$1,000
Annual Limitation on Cost Sharing	$7,150	$7,150	$5,850	$2,450	$1,250	$5,000
Emergency Room Services	50%	40%	30%	20%	5%	30%
Urgent Care	$50 (*)	$50 (*)	$50 (*)	$40 (*)	$25 (*)	$40 (*)
Inpatient Hospital Services	$500 (per day; applies only after deductible).	40%	30%	20%	5%	30%

TABLE 12—2018 FINAL STANDARDIZED OPTIONS NEW JERSEY—Continued

	Bronze	Silver	Silver 73% CSR plan variation	Silver 87% CSR plan variation	Silver 94% CSR plan variation	Gold
Primary Care Visit	$35 (*first 3 visits; then subject to deductible and $35 copay after deductible).	$30 (*)	$30 (*)	$10 (*)	$5 (*)	$25 (*)
Specialist Visit	$75 (applies only after deductible).	$60 (*)	$60 (*)	$25 (*)	$10 (*)	$40 (*)
Mental Health/Substance Use Disorder Outpatient Office Visit.	$35 (applies only after deductible).	$30 (*)	$30 (*)	$10 (*)	$5 (*)	$25 (*)
Imaging (CT/PET Scans, MRIs)	$100 (applies only after deductible).	$100 (*)	$100 (*)	$75 (*)	$40 (*)	$100 (*)
Speech Therapy	$35 (applies only after deductible).	$50 (*)	$30 (*)	$10 (*)	$5 (*)	$25 (*)
Occupational Therapy/Physical Therapy.	$35 (applies only after deductible).	$50 (*)	$30 (*)	$10 (*)	$5 (*)	$25 (*)
Laboratory Services	50%	40%	30%	20%	5%	30%
X-rays and Diagnostic Imaging**	50%	40%	30%	20%	5%	30%
Skilled Nursing Facility	$500 (per day; applies only after deductible).	40%	30%	20%	5%	30%
Outpatient Facility Fee (e.g., Ambulatory Surgery Center).	50%	40%	30%	20%	5%	30%
Outpatient Surgery Physician/Surgical Services.	50%	40%	30%	20%	5%	30%
Generic Drugs	$25 (*)	$25 (*)	$25 (*)	$5 (*)	$3 (*)	$10 (*)
Preferred Brand Drugs (***)	50%	$50 (*)	$50 (*)	$25 (*)	$5 (*)	$25 (*)
Non-Preferred Brand Drugs	50%	$75 (*)	$75 (*)	$50 (*)	$10 (*)	$50 (*)

(*) = Not subject to deductible.
(**) Excludes x-rays and diagnostic imaging associated with office visits.
(***) For compliance with applicable New Jersey State requirements, the standardized options in Table 12 are limited to three drug tiers. These plans do not have a separate specialty drug tier. However, for purposes of calculating AV using the 2018 AV Calculator, which is based on a four-drug tier system, the cost-sharing value for non-preferred brand drugs was assigned to the specialty drug tier.

b. General Functions of an Exchange

(1) Functions of an Exchange (§ 155.200)

In the 2017 Payment Notice, we established that a State Exchange could elect to enter into a Federal platform agreement through which it agrees to rely on HHS for services related to the individual market Exchange, the SHOP Exchange, or both. In § 155.200(f)(2), we required an SBE–FP to establish and oversee certain requirements for its QHPs and QHP issuers that are no less strict than the requirements that apply to QHPs and QHP issuers in an FFE. Requiring QHPs and QHP issuers in SBE–FPs to meet these same requirements ensures that all QHPs on *HealthCare.gov* meet a consistent minimum standard and that consumers obtaining coverage as a result of applying through *HealthCare.gov* are guaranteed plans that meet these minimum standards.

We proposed to amend § 155.200(f) by adding a new paragraph (f)(4) that would require State Exchanges that use the Federal platform for certain SHOP functions to establish standards and policies consistent with certain Federally-facilitated Small Business Health Options Program (FF–SHOP) requirements. In contrast to the requirements contained in § 155.200(f)(2), which pertain primarily to ensuring a consistent experience on *HealthCare.gov,* the proposed additional requirements for SBE–FPs that are listed in paragraph (f)(4) are necessary because the FF–SHOP requirements also referenced there are integral to the FF–SHOP platform's functionality and system build. HHS believes that these requirements are necessary from an operational perspective in order for State Exchanges to use the Federal platform for these SHOP functions. Additionally, requiring compliance with these requirements, rather than customizing the FF–SHOP platform's system build, would avoid sizeable costs associated with permitting State-based Exchanges to use the Federal platform for SHOP functions. Therefore, we proposed to add a new paragraph (f)(4) to require that SBE–FPs that utilize the Federal platform for certain SHOP functions establish standards and policies with respect to the following topics that are consistent with the following rules applicable in FF–SHOPs:

- Premium calculation, payment, and collection requirements as specified at § 155.705(b)(4) (for SBE–FPs using the Federal platform for SHOP eligibility, enrollment, or premium aggregation functions);
- The timeline for rate changes set forth at § 155.705(b)(6)(i)(A) (for SBE–FPs using the Federal platform for SHOP enrollment or premium aggregation functions);
- Minimum participation rate requirements and calculation methodologies set forth at § 155.705(b)(10) (for SBE–FPs using the Federal platform for SHOP enrollment functions);
- Employer contribution methodologies set forth at § 155.705(b)(11)(ii) (for SBE–FPs using the Federal platform for SHOP enrollment or premium aggregation functions);
- Annual employee open enrollment period requirements set forth at § 155.725(e)(2) (for SBE–FPs using the Federal platform for SHOP enrollment functions);
- Initial group enrollment and group renewal coverage effective date requirements set forth at § 155.725(h)(2) (for SBE–FPs using the Federal platform for SHOP enrollment functions); and
- Termination of SHOP coverage or enrollment rules set forth at § 155.735 (for SBE–FPs using the Federal platform for SHOP eligibility, enrollment, or premium aggregation functions).

We sought comment on this proposal, including on whether it would conflict with current State requirements, and on whether other FF–SHOP requirements should apply in SBE–FPs utilizing the

Federal platform for SHOP functions. We are finalizing the provisions as proposed. These amendments will become effective with the effective date of the final rule.

Comment: We received two comments in support of our proposal to require SBE–FPs using the Federal platform for SHOP functions to establish standards consistent with those applicable in the FF–SHOPs. One commenter stated that the proposal will provide consistency for QHP issuers offering coverage both in Federally-facilitated and in State-based SHOP Exchanges. We did not receive any comments on whether other FF–SHOP requirements should apply in SBE–FPs utilizing the Federal platform for SHOP functions.

Response: We are finalizing the provision as proposed. The provision does not apply to State-based SHOPs that do not use the Federal platform for SHOP functions.

(2) Consumer Assistance Tools and Programs of an Exchange (§ 155.205)

Section 155.205(c)(2)(iii)(A) and (B) require Exchanges, QHP issuers, and agents or brokers subject to § 155.220(c)(3)(i) (''Web-brokers'') to provide taglines in non-English languages indicating the availability of language services. These entities must include taglines on Web site content and documents that are critical for obtaining health insurance coverage or access to health care services through a QHP for qualified individuals, applicants, qualified employers, qualified employees, or enrollees. The taglines must indicate the availability of language services in at least the top 15 languages spoken by the limited English proficient (LEP) population of the relevant State, as determined in HHS guidance. In March 2016, HHS issued guidance providing language data and sample taglines in the top 15 languages spoken by the LEP population in each State.[42] A similar tagline requirement appears in the final rule implementing section 1557 of the Affordable Care Act (81 FR 31375 (May 18, 2016)), which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities.[43] The regulations implementing section 1557 apply to every health program or activity administered by an Exchange, every health program or activity administered by HHS, and every health program or activity, any part of which receives Federal financial assistance provided or made available by HHS.[44] The regulations implementing section 1557, as well as other applicable Federal civil rights laws, generally apply independently of the regulations governing Exchanges and health insurance issuers.

In the 2016 Payment Notice and in the March 2016 guidance, we stated that if an entity's service area covers multiple States, the top 15 languages spoken by LEP individuals may be determined by aggregating the top 15 languages spoken by all LEP individuals among the total population of the relevant States (80 FR 10788). We proposed to amend § 155.205(c)(2)(iii) to provide more specificity about when entities subject to § 155.205(c)(2)(iii)(A) and (B) would be permitted to aggregate LEP populations across States to determine the languages in which taglines must be provided, in light of questions that have arisen about this issue since publication of the 2016 Payment Notice.

At § 155.205(c)(2)(iii)(A), we proposed that if an Exchange is operated by an entity operating multiple Exchanges, or relies on an eligibility or enrollment platform that is relied on by multiple Exchanges, the Exchange may aggregate the LEP populations across all the States served by the entity that operates the Exchange or its eligibility or enrollment platform to determine the top 15 languages required for taglines under § 155.205(c)(2)(iii)(A).

At § 155.205(c)(2)(iii)(A), we also proposed that a QHP issuer would be permitted to aggregate the LEP populations across all States served by the health insurance issuers within the issuer's controlled group, whether or not those health insurance issuers offer plans through the Exchange in each of those States, to determine the top 15 languages in which it must provide taglines. For consistency, we proposed to define an issuer's controlled group using the definition that was proposed at § 147.106(d)(3)(i) of this rule, that is, a group of two or more persons that is treated as a single employer under sections 52(a), 52(b), 414(m), or 414(o) of the Code.

We explained that with respect to summaries of benefits and coverage (SBCs) provided under section 2715 of the PHS Act, consistent with the SBC Instruction Guide for Individual Health Insurance Coverage[45] and the SBC Instruction Guide for Group Coverage,[46] QHP issuers would still be required to provide an addendum with their SBCs with language taglines in the top 15 languages spoken by the LEP populations of the relevant State or States for QHPs offered through an Exchange. Any additional taglines required under section 2715 of the PHS Act and the implementing regulations,[47] and, as the Office for Civil Rights (OCR) has explained, any taglines required under section 1557 of the Affordable Care Act, must also be included in this addendum.[48] However, any taglines that are included in the addendum are not required to also be included in the SBC document. The addendum, which must only include tagline information required by the applicable language access standards and the nondiscrimination notice required under the regulations implementing section 1557, if applicable, must be provided along with the SBC and is not

[42] Ctr. Consumer Info. & Ins. Oversight, Ctrs. for Medicaid & Medicare Serv., Guidance and Population Data for Exchanges, Qualified Health Plan Issuers, and Web-Brokers to Ensure Meaningful Access by Limited-English Proficient Speakers Under 45 CFR 155.205(c) and 156.250. March 30, 2016. Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Language-access-guidance.pdf*; Appendix A—Top 15 Non-English Languages by State. Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Appendix-A-Top-15.pdf*; Appendix B—Sample Translated Taglines. Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Appendix-B-Sample-Translated-Taglines.pdf.*

[43] 42 U.S.C. 18116; 45 CFR part 92. Section 92.8(d)(1) requires each covered entity to ''post taglines in at least the top 15 languages spoken by individuals with limited English proficiency of the relevant State or States.'' The principle of aggregation with respect to the tagline requirement at § 92.8(d)(1) is discussed in the section 1557 final rule at 81 FR 31375, 31400.

[44] 45 CFR 92.2(a). In addition to the tagline requirement at § 92.8(d)(1), the regulations implementing section 1557 of the Affordable Care Act identify other obligations of a covered entity, such as the obligation to have marketing practices and benefit designs in a health-related insurance plan or policy or other health-related coverage that are nondiscriminatory. *See id.* § 92.207.

[45] Summary of Benefits and Coverage: Instruction Guide for Individual Health Insurance Coverage. April 2017. Available at *https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Individual-Instructions-508-MM.pdf.*

[46] Summary of Benefits and Coverage: Instruction Guide for Group Coverage. April 2017. Available at *https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Group-Instructions-4-4-clean-MM-508.pdf.*

[47] 45 CFR 147.200(a)(5) requires that group health plans and health insurance issuers offering group and individual health insurance coverage provide taglines in a particular non-English language if 10 percent or more of the population residing in the county is literate only in that same non-English language.

[48] OCR has explained that the written summary of benefits and coverage required by § 147.200(a) is a publication that is ''significant'' under § 92.8 of the rule implementing section 1557 of the Affordable Care Act. Accordingly, a covered entity required to provide a SBC must include the nondiscrimination notice and taglines required by § 92.8(b)(1), (d)(1) in its addendum in addition to complying with other applicable language access standards. See Section 1557: Frequently Asked Questions, available at *http://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/index.html.*

considered a part of the SBC document. Therefore, the addendum will not count towards the four double-sided page limit for the SBC under section 2715(b)(1) of the PHS Act. Additionally, we explained that our proposed policy related to aggregating LEP populations to determine the top 15 languages in which taglines must be provided would not apply to the tagline requirements under rules implementing sections 2715 and 2719 of the PHS Act.

We explained that we believe our proposed approach to when entities can aggregate under § 155.205(c)(2)(iii)(A) balances two important policy objectives: Ensuring that LEP individuals have notice of language assistance services, and minimizing burden on the entities subject to the rule. We also indicated that we believe that this approach would help promote consistency with the tagline requirements at § 92.8(d)(1) and 81 FR 31400, which permit covered entities that serve individuals in more than one State to aggregate the number of individuals with LEP in those States to determine the top 15 languages required by § 92.8(d)(1).

We proposed amendments to § 155.205(c)(2)(iii)(B), to specify that Web-brokers that are licensed in and serving multiple States would be permitted to aggregate the LEP populations in the States they serve to determine the top 15 languages in which they must provide taglines under § 155.205(c)(2)(iii)(B). We explained that we intended our approach to aggregation under § 155.205(c)(2)(iii)(B) to balance the policy objectives of ensuring that LEP individuals have notice of language assistance services and of minimizing burden on the entities subject to the rule.

We proposed amendments to § 155.205(c)(2)(iii)(A) and (B) to specify that Exchanges, QHP issuers, and Web-brokers may satisfy tagline requirements with respect to Web site content if they post a Web link prominently on their home page that directs individuals to the full text of the taglines indicating how individuals may obtain language assistance services, and if they also include taglines on any stand-alone document linked to or embedded in the Web site, such as one in portable document format (PDF) or word processing software format, that is critical within the meaning of the rule. We explained that in the case of ''critical'' stand-alone documents linked to or embedded in the Web site, there is a good chance that a consumer might land on such documents without going through an entity's home page first (for example, from a link on another Web site), and it is also likely that such documents would not contain a link to the entity's home page. In contrast, Web pages within the Web site that are not stand-alone linked or embedded documents are more likely to contain a prominent link to the home page. Under our proposal, if an entity subject to § 155.205(c)(2)(iii)(A) or (B) includes the required taglines in a stand-alone ''critical'' document linked to or embedded in the Web site of another entity subject to § 155.205(c)(2)(iii)(A) or (B), then the taglines standard would be deemed to be met by the entity that links to or embeds the ''critical'' document in its Web site, for purposes of that document.

Additionally, we noted that we were considering whether there is a need for the separate language access tagline requirements for Exchanges, QHP issuers, and Web-brokers under § 155.205(c)(2)(iii)(A) and (B), because the final rule implementing section 1557 of the Affordable Care Act (81 FR 31375 (May 18, 2016)) imposes on the covered entities to which that rule applies a similar set of obligations with respect to language access taglines. We sought comment on what, if any, additional protections for LEP consumers the standards under § 155.205(c)(2)(iii)(A) and (B) provide that are not included in 45 CFR part 92, and on whether the § 155.205(c)(2)(iii)(A) and (B) requirements are largely duplicative of the regulations implementing section 1557. We noted that not every entity subject to § 155.205(c)(2)(iii)(A) or (B) is a ''covered entity'' subject to section 1557 of the Affordable Care Act and its implementing regulation, and we indicated that we were considering replacing the tagline requirements currently set forth at § 155.205(c)(2)(iii)(A) and (B) with a provision requiring Exchanges, QHP issuers, and Web-brokers to follow certain standards under § 92.8 when providing the taglines required under § 155.205(c)(2)(iii), and requested comments on these approaches.

We are finalizing these provisions generally as proposed, but with several modifications. We are providing that Exchanges, and QHP issuers that are also subject to § 92.8, will be deemed to be in compliance with § 155.205(c)(2)(iii)(A) if they are in compliance with § 92.8, and are modifying regulation text to more clearly reflect the aggregation policy applicable to Exchanges under § 155.205(c)(2)(iii)(A). We have also removed references to an applicability date of these provisions (the first day of the individual market open enrollment period for the 2017 benefit year, or November 1, 2016) because it has already passed. Finally, because the definition of controlled group at § 147.106(d) that is being finalized in this rule has changed from the proposed definition in ways that would be difficult to implement for purposes of § 155.205(c)(2)(iii)(A), we are replacing the cross-reference to § 147.103(d)(3)(i) in § 155.205(c)(2)(iii)(A) with the definition that was originally proposed at § 147.103(d)(3)(i).

Comment: In response to our request for comment on whether the § 155.205(c)(2)(iii)(A) and (B) requirements are largely duplicative of the tagline requirements in the regulations implementing section 1557 of the Affordable Care Act, and whether we should replace them with cross-references to § 92.8 or delete them entirely, many commenters stated that the § 92.8 requirements largely encompass the § 155.205(c)(2)(iii)(A) and (B) requirements. Commenters stated that, as a result, complying with these two sets of regulations will add significant administrative complexity and costs for issuers without any attendant advantage for consumers. Some commenters recommended that we eliminate § 155.205(c)(2)(iii)(A) and (B) entirely, and some recommended replacing them with cross-references to § 92.8, deeming entities to be in compliance with § 155.205(c)(2)(iii)(A) and (B) if they are in compliance with § 92.8. They stated that these efforts to streamline the two standards would reduce inconsistencies and overlapping requirements, reducing administrative burden and costs, while ensuring appropriate protections for consumers. A few commenters suggested that entities not already subject to § 92.8 should comply only with the tagline provisions of that section, while another recommended limiting the scope of § 155.205(c)(2)(iii)(A) and (B) to entities that are not considered ''covered entities'' under section 1557 of the Affordable Care Act, rather than including exceptions for non-covered entities in § 92.8. One commenter requested that the treatment afforded to small-sized significant publications and significant communications under § 92.8 be applied to the requirements under § 155.205(c). Other commenters recommended that we retain the requirements in § 155.205(c)(2)(iii)(A) and (B), explaining that greater specificity and greater requirements are justified in this rule given the fact that the goals of the two rules are different, and the entities covered under this rule do not always overlap with those

covered by section 1557 of the Affordable Care Act. They stated that many of the entities covered under § 155.205(c)(2)(iii)(A) and (B) are large, with financial and programmatic capabilities to provide taglines.

Response: Section 1557 of the Affordable Care Act and its implementing regulations establish a range of important protections for individuals with LEP in Federally-funded health programs and activities across the country. As commenters noted, the tagline requirements in the section 1557 regulations are in several ways broader than those applicable to Exchanges and QHP issuers under § 155.205(c)(2)(iii)(A). Given the comprehensiveness of the regulations implementing section 1557 of the Affordable Care Act, and in consideration of the difficulties and costs that arise for Exchanges, QHP issuers subject to both sets of requirements, and regulators when two separate but overlapping rules are in force, we are finalizing § 155.205(c)(2)(iii)(A) with a modification specifying that Exchanges, and QHP issuers that are also subject to § 92.8, will be deemed to be in compliance with § 155.205(c)(2)(iii)(A) if they are in compliance with § 92.8. Different, yet overlapping requirements are difficult for entities to implement and create confusion for the public, and our approach permits Exchanges, and those QHP issuers that are also subject to § 92.8, to follow a single set of tagline requirements. We will continue to work closely with OCR to ensure that the deeming process under § 155.205(c)(2)(iii)(A) works smoothly and that § 92.8 is consistently applied and enforced, and will facilitate State-based Exchanges doing so as well. The rest of § 155.205(c)(2)(iii)(A), as amended, would apply to any QHP issuer that is not also a covered entity under § 92.8. Such an issuer would be required to comply with § 155.205(c)(2)(iii)(A), as amended in this rule.

We have not extended an option to comply with § 155.205(c)(2)(iii)(A) or (B) by complying with § 92.8 to QHP issuers that are not subject to § 92.8 or to Web-brokers, because those entities are generally not required to comply with § 92.8 (most Web-brokers are not covered entities under section 1557 of the Affordable Care Act) and thus OCR would generally not have jurisdiction to enforce § 92.8 with regard to those entities. We are therefore finalizing § 155.205(c)(2)(iii)(B) as proposed, without deeming Web-brokers to be in compliance with that provision if they comply with § 92.8.

Comment: Many commenters supported our proposal to further articulate our interpretation of the aggregation policy under § 155.205(c)(2)(iii)(A) mentioned in the preamble to the 2016 Payment Notice [49] by permitting QHP issuers to aggregate the top 15 languages spoken by the LEP populations in the States served by the health insurance issuers in the issuer's controlled group. Several commenters supported the proposed aggregation policy for Web-brokers. The commenters supporting the proposals indicated that the proposals would allow entities to more efficiently provide important information to LEP populations and that the proposals strike the appropriate balance between facilitating language access for LEP populations and minimizing the burden on the entities subject to the rule. Other commenters cautioned that this policy would reduce language access for groups that have a large presence in certain States but whose languages would not fall within the top 15 languages spoken by LEP populations if LEP populations were aggregated across multiple States. Many commenters suggested that HHS allow aggregation only if an entity documents that it would be a hardship not to aggregate due to increased costs, or that HHS prohibit aggregation in circumstances where the applicable aggregation rule would result in a significantly different list of taglines compared to the State-specific approach. Many of these commenters posited that State-specific taglines should not require significant resources since HHS provides sample taglines, and that issuers likely have to tailor materials to meet State-specific standards in any case. Several commenters suggested that since Web pages do not have the space limitations that paper does, links from a home page to a page with taglines could easily include all disaggregated taglines. A number of commenters requested that if aggregation is permitted for QHP issuers, it should only be allowed across States in which an issuer's controlled group offers Exchange plans. One commenter requested that HHS give QHP issuers the option to use either the newly proposed aggregation principles or to maintain a State-specific methodology. One commenter proposed that issuer associations be allowed to aggregate across States.

Response: As we stated in the preamble to the proposed rule, we believe the amendments we proposed to § 155.205(c)(2)(iii)(A) help promote consistency with the tagline requirements at § 92.8(d)(1) and 81 FR 31400, which permit covered entities that serve individuals in more than one State to aggregate the number of individuals with LEP in those States to determine the top 15 languages required by § 92.8(d)(1). We are finalizing the proposals generally as proposed, except for the modifications noted above, including a modification under which Exchanges, and QHP issuers that are also subject to § 92.8, will be deemed in compliance with § 155.205(c)(2)(iii)(A) if they are in compliance with § 92.8.

Although we have already provided sample taglines, we appreciate issuers' concerns that adding 15 different taglines in each State served by the health insurance issuers in the issuer's controlled group entails information systems changes and paper and printing costs. We believe our approach allows QHP issuers that are part of controlled groups to more efficiently provide important information to LEP consumers. For example, many insurance companies that would fit our definition of a controlled group use a common technology platform across multiple States that is shared by their component health insurance issuers. Requiring each QHP issuer in the controlled group to use State-specific taglines without taking account of these kinds of technological structures would pose difficult operational challenges for many QHP issuers. Our approach helps ensure compliance for such issuers without imposing undue administrative burden. Because issuer associations do not generally share technology platforms, we decline to extend the policy to issuer associations.

We recognize that under the aggregation approaches we proposed, some languages that are spoken by a significant number of individuals in one or two States might not be included in the top 15 languages in which taglines must be provided by an Exchange, QHP issuer, or Web-broker across multiple States, particularly if the number of States across which the Exchange, QHP issuer, or Web-broker is aggregating is high. We are not, however, modifying the proposals as recommended by the commenters. We believe our finalized aggregation approaches strike an appropriate balance between helping ensure that LEP consumers have notice of language assistance services and minimizing the burden on the entities subject to the rule. We will continue to monitor this approach to determine whether speakers of certain languages are significantly or disproportionately impacted. We also remind QHP issuers, Web-brokers, and Exchanges that notwithstanding the aggregation policies

[49] See 80 FR 10788.

finalized in this rule, they would be permitted to provide non-aggregated, State-specific taglines, or taglines in more than the required 15 languages, as could be required to meet State-specific standards. We encourage this as a best practice. We also agree that QHP issuers, Web-brokers, and Exchanges may have more space on Web pages than on paper documents, and encourage them where practicable to include disaggregated, State-specific taglines, or taglines that reach as many LEP populations as possible in the States where they are operating.

We note that for the purposes of § 155.205(c)(2)(iii)(A), we intend to apply the regulatory definition of controlled group that was originally proposed at § 147.106(d)(3)(i), and will not apply any State-law definitions of that term, in contrast to the manner in which HHS is finalizing that definition in the context of guaranteed renewability, as discussed in the preamble to § 147.106, above. We have therefore replaced the proposed cross-reference to § 147.106(d)(3)(i) in § 155.205(c)(2)(iii)(A) with the definition of controlled group that was originally proposed at § 147.106(d)(3)(i). We are adopting this approach to ensure that § 155.205(c)(2)(iii)(A) applies consistently to QHP issuers across multiple States. In contrast to the way that the guaranteed renewability provisions are applied and enforced at the State level, the aggregation policy under § 155.205(c)(2)(iii)(A) is specifically intended to apply to issuers across States and potentially among States in which different definitions of ''controlled group'' under the guaranteed renewability provision finalized in this rule at § 147.106(d)(4) would apply. Therefore, to ensure that issuers can implement this aggregation policy consistently within each controlled group, we believe it is important that the definition of controlled group that is applicable under § 155.205(c)(2)(iii)(A) be uniform across all States.

Comment: With regard to our proposal to allow an Exchange to aggregate the LEP populations across all the States served by the entity that operates the Exchange or its eligibility or enrollment platform, several commenters were concerned that our reference in the proposed rule text to an entity that operates an Exchange's eligibility or enrollment platform could be read to include a contractor that might contract with a number of States to develop eligibility or enrollment information technology for State-based Exchanges. Several others were concerned that the most common non-English languages spoken across the 39 States with FFEs or SBE–FPs that use the Federal eligibility and enrollment platform, are likely to vary, and that by aggregating them we risk excluding populations.

Response: We believe our approach strikes an appropriate balance between helping ensure that LEP consumers have notice of language assistance services and minimizing the operational challenges on the entities subject to the rule. The aggregation approach we proposed for Exchanges was intended to permit an Exchange that is operated by an entity that operates multiple Exchanges, or an Exchange that relies on an entity to conduct its eligibility or enrollment functions that conducts such functions for multiple Exchanges, to aggregate the LEP populations across all the States served by the entity that operates the Exchange or the entity that conducts its eligibility or enrollment functions to determine the top 15 languages required for taglines. We have modified the language in the final rule to make it clearer that the rule allows aggregation only by an Exchange that is operated by an entity operating multiple Exchanges, or by an Exchange that relies on an entity to conduct its eligibility or enrollment functions that provides those services to more than one Exchange. An entity contracting with more than one State or Exchange to develop an Exchange's eligibility or enrollment information technology platform is not an entity operating multiple Exchanges or conducting their eligibility or enrollment functions for the purposes of this rule. For example, two State-based Exchanges whose information technology platforms were developed by the same contractor are not permitted to aggregate the LEP populations across their States. On the other hand, HHS provides eligibility and enrollment functionality for FFEs and State-based Exchanges in 39 States that rely on the Federal *HealthCare.gov* platform to conduct eligibility and enrollment functions. Under this rule, the Exchanges using the Federal platform can aggregate the LEP populations across those 39 States to determine the languages in which taglines must be provided. We remind SBE–FPs that the language access requirements under § 155.205(c) and § 92.8 apply to all of the SBE–FP's documents, communications, and other materials that are subject to those rules, not just documents, communications, and other materials that the SBE–FP relies upon *HealthCare.gov* to generate and send. Accordingly, SBE–FPs also must comply with § 155.205(c)(2)(iii)(A) when sending any communications subject to § 155.205(c)(2)(iii)(A) through means other than through the *HealthCare.gov* platform, and with respect to the SBE–FP's informational Internet Web site operated under § 155.205(b)(7). Additionally, because Exchanges are covered entities under section 1557 of the Affordable Care Act, the notice and tagline requirements at § 92.8 also apply to any significant publications and communications sent by the SBE–FP through means other than the *HealthCare.gov* platform, and to the SBE–FP's informational Internet Web site. Again, under the final rule we are deeming all Exchanges to comply with § 155.205(c)(2)(iii)(A) as long as they comply with § 92.8.

Comment: Several commenters supported our proposal that Exchanges, QHP issuers, and Web-brokers may satisfy tagline requirements with respect to Web site content if they post a Web link prominently on their home page that directs individuals to the full text of the taglines, and if they also include taglines on any stand-alone document linked to or embedded in the Web site, such as one in PDF or word processing software format, that is ''critical'' within the meaning of the rule. Several commenters requested that HHS limit the critical documents that must have taglines when posted online to stand-alone formularies, SBCs, and provider directory documents, since these are the critical documents that are most often linked to by third-party Web sites. One commenter suggested that these tagline requirements should also apply to health education and other consumer engagement communications. A few commenters suggested that HHS require that the link from an entity's home page be in-language, since a link that is in English provides little aid to LEP populations looking for language access assistance. One commenter requested that HHS ensure that the link from the home page is displayed prominently, in large font, and ''above the fold'' so that LEP consumers can easily and quickly understand their right to access information in other languages.

Response: As some commenters mentioned, HHS has provided in-language links on the *HealthCare.gov* home page. These are links written in non-English languages posted conspicuously on the home page that direct the individual to the full text of the tagline indicating how the individual may obtain language assistance services. Additionally, covered entities can comply with the tagline requirements under the rules implementing section 1557 of the Affordable Care Act, at § 92.8, by

posting in-language Web links. Although § 155.205(c)(2)(iii)(A) and (B) do not require that links from a home page be in-language links, we agree that it is important that these links be displayed prominently and be in-language so that non-English speakers are able to recognize the languages listed. We decline to alter our definition of ''critical'' documents at this time because we continue to believe it is important for LEP consumers to have notice of translation services on any document that is required by law or regulation to be provided to a qualified individual, applicant, qualified employer, qualified employee, or enrollee.

Comment: Two commenters requested that we delay enforcement of § 155.205(c)(2)(iii)(A) and (B), and a few commenters proposed alternative models for our language access provisions, such as the HIPAA Privacy Rule standards and the Medicare Marketing Guidelines.

Response: Because we finalized § 155.205(c)(2)(iii)(A) and (B) in the 2016 Payment Notice on February 27, 2015, more than a year and a half before Exchanges, QHP issuers, and Web-brokers are required to comply with these tagline requirements, we believe Exchanges, QHP issuers, and Web-brokers have had ample time to prepare to implement these provisions. Therefore, it is CMS's view that compliance with § 155.205(c)(2)(iii)(A) and (B) should not pose a significant challenge for most entities subject to those provisions, particularly in light of the amendments made in this rule. In particular, we expect that deeming Exchanges, and QHP issuers that are also subject to § 92.8, to be in compliance with § 155.205(c)(2)(iii)(A) if they are in compliance with § 92.8 will help alleviate concerns about multiple and inconsistent tagline requirements. We also remind entities that they must also comply with any other applicable Federal or State law regarding language access and taglines, including the regulations implemented under section 1557 of the Affordable Care Act, the HIPAA Privacy Rule standards, and the Medicare Marketing guidelines, if applicable. Additionally, because the applicability date for § 155.205(c)(2)(iii)(A) and (B) has passed (with the exception of Web-brokers that have not yet been registered with the Exchange for at least 1 year), we have modified the rules to eliminate reference to that date. The amendments made in this rule will take effect when the rule takes effect.

Comment: One commenter suggested that we should require all entities operating as part of Affordable Care Act Exchanges to have comprehensive language access plans, and to have processes to ensure the accuracy and quality of written translations of all documents and communications.

Response: We note that for entities covered under Affordable Care Act section 1557, developing and implementing an effective written language access plan that is appropriate to the entity's particular circumstances is a factor that the Director of OCR will take into account in evaluating whether a covered entity has met its obligation with respect to meaningful access for individuals with LEP under § 92.201. As a best practice, we recommend that Exchanges, QHP issuers, and Web-brokers have comprehensive language access plans and quality controls for written translations.

Comment: One commenter supported our statement that the required taglines do not count towards the Summary of Benefit and Coverage page limit. Several commenters requested that HHS amend the tagline requirements under § 147.136(e) (internal claims and appeals and external review) and § 147.200(a)(5) (Summary of Benefits and Coverage) to deem issuers in compliance with those rules if they comply with the requirements under § 92.8. One commenter requested that we extend the 10 percent of county threshold to all critical documents.

Response: Because it is important that consumers have sufficient notice of translation services for SBCs and internal claims and appeals documents, we decline to alter the language thresholds for the tagline requirements that apply to those documents under § 147.136(e) and § 147.200(a)(5). Because the language thresholds for SBCs and internal claims and appeals documents have been in place for years, and most issuers are already in compliance with them, we do not believe it is necessary to amend these thresholds. As we indicated in the proposed rule preamble, our policy allowing QHP issuers to aggregate the LEP populations in the States served by the health insurance issuers within the issuer's controlled group to determine the languages in which taglines must be provided under § 155.205(c)(2)(iii)(A) does not apply to the tagline rules for SBCs under § 147.200(a)(5) or to the tagline rules for internal claims and appeals under § 147.136(e). For issuers subject to section 1557 of the Affordable Care Act, if the tagline requirement at § 92.8(d)(1) would require that taglines be provided in languages additional to those required under § 147.136(e) and § 147.200(a)(5), the additional languages may be determined by following the aggregation policies that apply under § 92.8(d)(1). Additionally, if an issuer subject to both § 155.205(c)(2)(iii)(A) and § 92.8 chooses to comply with § 155.205(c)(2)(iii)(A) by complying with § 92.8, that does not mean that the issuer can comply with § 147.200(a)(5) or § 147.136(e) by complying with § 92.8. For documents other than the SBC and internal claims and appeals documents, we continue to believe that the standard set forth in this final rule is the appropriate standard.

Comment: Two commenters requested that HHS clarify that § 155.205(c)(2)(iii)(A) and (B) do not preclude a State-based Exchange from setting its own standards for identifying the top 15 languages, rather than relying on HHS's guidance.

Response: Section 155.205(c)(2)(iii)(A) and (B) specifically provide that the top 15 languages in which taglines are required must be determined in guidance published by the Secretary. However, we agree that Exchanges, QHP issuers, and Web-brokers may have current and reliable data about the LEP populations in their States that differ from the data used to develop HHS's guidance. To promote the use of accurate and localized demographic data and methodologies, and to help streamline our approach with OCR's approach under the section 1557 rule, we now explain, as a supplement to the March 2016 guidance referenced above, and thus, as part of the guidance published by the Secretary that is referenced in the rule, that in implementing § 155.205(c)(2)(iii)(A) and (B), Exchanges, QHP issuers, and Web-brokers may refer to sources other than HHS's list of the top fifteen languages in each State, if they have a reasonable basis for relying on such sources when considering characteristics such as the currency, reliability, and stability of the data. These entities may use such sources even if the list of languages produced from those sources is different from HHS's list or has variations in the relative rank of the languages. If such alternative sources are used, relevant documentation should be maintained in accordance with applicable record retention requirements to demonstrate compliance with § 155.205(c)(2)(iii)(A) and (B).

(3) Ability of States To Permit Agents and Brokers To Assist Qualified Individuals, Qualified Employers, or Qualified Employees Enrolling in QHPs (§ 155.220)

In the proposed rule, we proposed building on our existing oversight efforts by adopting additional consumer

protection standards for agents and brokers who assist with enrollments through Exchanges. We proposed to require differential display of standardized QHP options and enlisting agents and brokers in post-enrollment support activities. We also solicited comments to inform the development and implementation of the enhanced direct enrollment pathways, including comments on consumer protection standards, privacy and security standards, and oversight processes for the enhanced direct enrollment pathway.

i. Differential Display of Standardized Options on the Web Sites of Agents and Brokers

In the proposed 2018 Payment Notice, we recommended requiring Web-brokers and issuers that use the direct enrollment pathways to differentially display standardized options. However, we noted that system constraints may prevent Web-brokers and issuers from mirroring the *HealthCare.gov* display, and therefore proposed that a Web-broker or issuer that uses the direct enrollment pathway may deviate from the display on *HealthCare.gov* with approval from HHS. We proposed that requests from Web-brokers and issuers seeking approval for an alternate differentiation format would be reviewed based on whether the same level of differentiation and clarity is being provided under the requested deviation as is provided on *HealthCare.gov.* Therefore, we proposed adding § 155.220(c)(3)(i)(H), for Web-brokers, and adding § 156.265(b)(3)(iv), for QHP issuers engaged in direct enrollment, to require differential display of all standardized options in accordance with the requirements under § 155.205(b)(1), in a manner consistent with that adopted by HHS for display on the FFE Web site, or with an HHS-approved deviation. We are finalizing our proposal. We believe differential display of standardized options will not require significant modification of Web-broker and issuer platforms, but that such display will provide an important service for consumers seeking to enroll in a standardized option. To provide additional flexibility for Web-brokers and issuers with respect to this display, we intend to provide ''safe harbor'' guidelines with respect to deviations that will be deemed to be approved because deviations within those guidelines will be deemed to have the same level of differentiation and clarity as provided on *HealthCare.gov.*

Comment: Several commenters opposed this requirement because they believe Web-brokers without contractual relationships with issuers offering standardized options would not be able to implement the requirement. Other commenters stated that direct enrollment issuers should not be required to display plans, including standardized options, of other issuers. Some commenters were also concerned that the lack of flexibility to display these standardized options will negate the value Web-brokers provide to consumers.

Some commenters supported the proposal because it promotes consistent messaging across all platforms for enrollment including *HealthCare.gov,* Web-brokers, and direct enrollment issuers. One commenter recommended that HHS require standardized options to be displayed above all QHP listings. Several commenters also supported the HHS standard to review deviations from the differential display of standardized plans. These commenters stated that HHS should rigorously review such requests and grant permission for deviations sparingly to encourage consistency across platforms. Some commenters cautioned that requiring direct enrollment partners to seek approval for deviations would be burdensome.

Response: We clarify that under § 155.220(c)(3)(i)(B) and (D) a Web-broker must provide consumers the ability to view QHPs offered through the Exchange and must display all QHP data provided by the Exchange. Beginning with the 2018 plan year, this includes the differential display of the standardized options available in a State. We intend to provide access to information on standardized options to Web-brokers through the Health Insurance Marketplace Public Use Files and QHP Landscape file. We remind Web-brokers that if they do not have access to the additional required comparative information for a QHP offered through an Exchange (including premium or benefit information on standardized options), in accordance with 45 CFR 155.220(c)(3)(i)(A), the standardized Plan Detail Disclaimer must be prominently displayed for the specific QHP. A direct enrollment issuer, however, need only differentially display those standardized options that it offers.

ii. Enhanced Direct Enrollment Process

Under the direct enrollment process today, a consumer is redirected from the Web site of the direct enrollment partner (issuer or Web-broker) to *HealthCare.gov* to complete the eligibility application and obtain an eligibility determination. We requested comments on a proposal that would allow consumers to remain on the direct enrollment Web site to complete the eligibility application without being redirected to *HealthCare.gov.* The enhanced direct enrollment partner would then pass the information collected in the eligibility application to the Exchange. The Exchange would then generate the eligibility determination and send the eligibility results back to the enhanced direct enrollment partner. This would allow the consumer to see the eligibility results on the direct enrollment partner's Web site. The Exchanges would continue to make the eligibility determinations, and the eligibility verification information received by the Exchanges from other government agencies would not be disclosed to the enhanced direct enrollment partner. In preparation for plan year 2017, we have made a number of improvements to the ''double redirect'' process in order to improve the consumer experience with the existing direct enrollment pathway. Under an enhanced direct enrollment process, the Exchange must ensure an accurate eligibility determination and must protect the privacy and security of all consumers that interact with it via the direct enrollment partner. We will not implement this process until we can ensure technical readiness and sufficient oversight of the eligibility application processes. In this and previous rules, we have begun to establish the regulatory framework for an enhanced direct enrollment program in which we would provide an ability for consumers to apply for coverage on a non-Exchange Web site while we explore the technical, operational, privacy, and security requirements to implement such a program. We continue to explore the program implementation details of such a program, and are maintaining the current ''double redirect'' direct enrollment approach at this time.

Comment: The enhanced direct enrollment process received support from many commenters, who believe that enabling applicants to remain on the direct enrollment partner's non-Exchange Web site would improve the consumer experience. Many commenters stated that enhanced direct enrollment would reduce consumer frustration and confusion, leading to increased enrollments.

One commenter supported enhanced direct enrollment but expressed concern that direct enrollment partners might elect to not participate in the FFEs for plan year 2018 if the enhanced direct enrollment process were not available. Another commenter recommended that HHS delay the enhanced direct

enrollment process until it has developed sufficient oversight methods to protect consumer privacy and security and the integrity of the eligibility and enrollment processes.

One commenter recommended that HHS allow direct enrollment partners to use this process for plan year 2017. Several commenters wanted HHS to clarify that HHS will continue to be responsible for the eligibility determination. Several commenters requested that HHS establish minimum standards for security. Some commenters specifically recommended that HHS require a Minimum Acceptable Risk Standard for Exchanges (MARS–E) compliance manual from direct enrollment partners prior to allowing them to participate in the enhanced direct enrollment process. Other commenters expressed concerns about HHS imposing burdensome privacy and security requirements, such as National Institute of Standards and Technology (NIST) standards or MARS–E 2.0. Another commenter was concerned about HHS's ability to monitor direct enrollment partners' privacy and security plans. One commenter was concerned also about the potential that direct enrollment partners will collect PII and store it on their systems. One commenter was concerned about direct enrollment partners' ability to connect to the Data Services Hub directly.

Many commenters were concerned that enhanced direct enrollment would damage the consumer experience and consumer's connections with the FFEs. Several commenters expressed concern that consumers may be unaware or lack access to notices from the FFEs and SBEs, specifically concerning data inconsistencies, verifications, or Forms 1095–A. Some commenters recommended that HHS require direct enrollment partners to provide each consumer with their FFE Application ID number and information on how to access *HealthCare.gov.* Multiple commenters suggested that HHS require that direct enrollment partners adequately inform consumers about the nature of the enhanced direct enrollment process and their relationship with the FFEs. Several commenters expressed concerns about the appearance, content, and structure of the eligibility application on the direct enrollment partners' Web sites as part of enhanced direct enrollment. Another commenter expressed concerns that consumers will have limited access to consumer assistance, including the FFE and SBE call centers and their direct consumer assistance capabilities.

Response: We thank commenters for their input, which we will take into account as we work towards readying the enhanced direct enrollment process.

We intend to conduct any required privacy and security impact assessments and will address regulatory changes to implement the enhanced direct enrollment process in future rulemaking, as may be necessary.

iii. Additional Protections for the Current Direct Enrollment Process and FFE Standard of Conduct for Agents and Brokers

In order to ensure adequate consumer protections, we proposed a number of modifications to existing requirements and the establishment of new requirements for agents and brokers that use the current direct enrollment process. We also proposed the same changes to § 156.1230 (where appropriate), which governs QHP issuers using direct enrollment, to ensure that consumers have similar protections when enrolling through a direct enrollment channel, whether they enroll using a Web-broker or a QHP issuer. For further discussion of the amendments to the QHP issuer direct enrollment partner requirements please see the preamble section on § 156.1230.

First, we proposed to add new paragraph § 155.220(c)(3)(i)(I) to require Web-brokers to display information provided by HHS pertaining to eligibility for the APTC and cost-sharing reductions in a prominent manner. This will help assure that consumers understand their potential eligibility for APTC, cost-sharing reductions and potential liability for excess APTC repayment.

Second, under § 155.310(d)(2), an Exchange may only provide APTC if the Exchange receives certain attestations from the tax filer, and must permit an enrollee to accept less than the full amount of APTC for which the enrollee is eligible. Therefore, in order for an Exchange to provide APTC to a consumer who enrolls through a direct enrollment pathway, the direct enrollment partner must provide enrollees with an opportunity to input their desired amount of APTC and provide the required APTC-related attestations. We are aware that some Web-brokers are not consistently permitting enrollees to select an amount for APTC under the existing direct enrollment pathway. Accordingly, we proposed to add § 155.220(c)(3)(i)(J) to require Web-brokers to allow consumers to select an APTC amount and make related attestations in accordance with the requirements of § 155.310(d)(2).

Comment: Commenters were in favor of these proposals, stating that they would protect consumers and increase successful enrollments.

Response: We are finalizing these policies as proposed in § 155.220(c)(3)(i)(I) and 155.220(c)(3)(i)(J). We note that these new requirements are not related to the eligibility application (and thus relevant regardless of whether an enhanced direct enrollment process is implemented), will increase transparency, and are consistent with § 156.1230(a)(1)(v), under which QHP issuer direct enrollment partners are currently required to allow consumers to select an APTC amount and make related attestations.

Third, we proposed § 155.220(c)(3)(i)(K) to require that the agent or broker of record who assisted the consumer with enrollment through the Exchange (that is, the agent or broker whose National Producer Number (NPN) is listed on the Exchange application) support post-enrollment activities necessary for the consumer to effectuate his or her coverage or resolve issues related to his or her enrollment, including discrepancies related to eligibility. We solicited comments on types and extent of support that agents and brokers should be required to provide. We also solicited comments on what additional safeguards, if any, should be put in place to protect consumers and their data.

Comment: Several commenters opposed the proposal, cautioning that agents and brokers may not all have the necessary capabilities, expertise, data, or technology required to assist with all post-enrollment activities or consumer scenarios. A number of commenters sought clarification on the scope of the post-enrollment activities. Several commenters also cautioned that certain populations might require unique assistance that only specialized agents and brokers may be able to provide. One commenter suggested HHS allow agents and brokers to refer consumers to Navigators and certified application counselors as an alternative. One commenter expressed concern that the proposal would raise significant financial burden on small agencies and requested whether the requirement would still apply if the issuer ceases to compensate the agent or broker. One commenter expressed concern that this proposal would further distance consumers from *HealthCare.gov.* One commenter requested that HHS clarify that an issuer would not incur any liability based on any activities that an agent or broker might be obligated to perform, unless the activities involve a

captive agent conducting activities on behalf of the issuer. Several commenters cited reports over the past three open enrollment periods that some agents or brokers have been enrolling consumers in Exchange plans without providing them with the information necessary to access or update their *HealthCare.gov* account information.

Response: In light of the comments and the significant burden that could be placed on agents and brokers, we are not finalizing this policy at this time. However, we encourage agents and brokers to assist consumers with post-enrollment activities as we believe it is in the shared interest of helping consumers maintain continuous enrollment. We believe that this would build on the existing support provided by agents and brokers today, and would help ensure that consumers who work with agents and brokers are able to effectuate or maintain their QHP coverage, and to update their eligibility as necessary. Specifically, we encourage agents and brokers to generally offer similar support as Navigators under § 155.210(e)(9)(i), (iii), and (iv). As such, the agent or broker of record on an enrollment transaction should help the enrollee understand open and special enrollment periods, help enrollees understand the process of filing Exchange eligibility appeals, help consumers resolve data matching inconsistencies, help consumers generally understand the premium tax credit reconciliation process, and help consumers understand basic concepts and rights of health coverage (coverage to care). We understand the concerns commenters have raised related to consumer access to information regarding their enrollments. Accordingly, in future rulemaking, HHS will consider the best means to ensure that consumers receive enrollment support from agents and brokers.

Fourth, we proposed to add § 155.220(c)(3)(i)(L) to require Web-brokers to demonstrate operational readiness, including compliance with applicable privacy and security requirements, prior to accessing either the current or enhanced direct enrollment pathway, including using the Web-broker's Web site to complete the QHP selection. We intend for this process to build upon the onboarding and testing process that Web-brokers undergo under existing procedures for the current direct enrollment process. This process would require that prior to accessing the Exchange, a Web-broker must demonstrate that required privacy and security measures and the technical specifications, testing requirements, and onboarding procedures applicable to the direct enrollment process are functional. Consistent with § 155.220(c)(5), we stated our intent to conduct ongoing monitoring and audits to verify compliance throughout the term of the Web-broker's registration with the Exchange.

Comment: All commenters were in favor of this proposal.

Response: We are finalizing this provision as proposed in § 155.220(c)(3)(i)(K). We note that this requirement generally formalizes the current onboarding process. Under an enhanced direct enrollment process, we anticipate additional readiness components would be added in line with the additional features provided to enhanced direct enrollment partners.

Fifth, we proposed adding § 155.220(c)(3)(i)(M), to allow HHS to immediately suspend the agent's or broker's ability to transact information with the Exchange as part of the direct enrollment pathway if we discover circumstances that pose unacceptable risk to Exchange operations or its information technology systems. Under the proposal, the suspension would last until HHS is satisfied that the risk has been removed or sufficiently mitigated. In addition, we proposed to add language to § 155.220(c)(3)(i)(E) to require an agent or broker to cooperate with any audit under this section. This would include responding to requests for information in a timely fashion, as well as providing access upon request to documents or other materials necessary to confirm compliance with applicable requirements.

Comment: Most commenters agreed with our proposal regarding HHS's ability to immediately suspend an agent or broker's ability to transact information with the Exchange through the direct enrollment pathway. However, many commenters suggested that HHS specify criteria or guidance outlining how the agency would identify risks. One commenter who disagreed with the proposal recommended that HHS establish an appeals mechanism for a determination. All commenters agreed with our proposal to require an agent or broker to cooperate with an audit under this section. One commenter requested that HHS clearly define what it means to respond to requests in a ''timely fashion'' and clearly outline how Federal compliance activities will be coordinated with the State regulators.

Response: Based on the comments we received, we are finalizing these provisions as proposed in § 155.220(c)(3)(i)(L). As an example of criteria HHS would invoke under the suspension provision, a Web-broker's access to the direct enrollment pathway may be suspended, for example, if HHS determines—based on transaction volumes, audits, or other reports—that the Web-broker is using an enrollment process other than the HHS-approved processes, presenting a risk of inaccurate eligibility determinations, is presenting an operational risk to the FFE, or presenting unacceptable security or privacy risks to Exchange operations or Exchange information technology systems. The ability to immediately suspend a Web-broker's connection to HHS's systems is critical to mitigate further damages and potential harm to the Exchanges and consumers. The temporary suspension would provide HHS with the ability to conduct an investigation and work with the Web-broker to mitigate or otherwise resolve any risk(s). While there is no formal appeals mechanism, the Web-broker will have an opportunity during the HHS investigation to remedy or mitigate the risk, as well as provide information to respond to the risk(s) identified. We also clarify that we interpret ''timely fashion'' to mean reasonably responding within the time specified in the request (including any agreed-upon extensions).

Sixth, we noted in the proposed rule that, consistent with § 155.220(c)(4), Web-brokers are permitted to provide access, through a contract or other arrangement, to their non-Exchange Web site to another agent or broker seeking to help an applicant complete the QHP selection process through the direct enrollment pathway. We understand that a number of Web-brokers provide access to their non-Exchange Web site to other agents and brokers registered with the FFEs who, in turn, host their own third-party Web sites to facilitate enrollment in the Exchange. To better protect consumers accessing these downstream third-party Web sites connected to the Web-broker's non-Exchange Web site, we proposed to add language to § 155.220(c)(4)(i)(E) to require Web-brokers that provide this access to be responsible for ensuring those Web sites are compliant with this section.

Comment: One commenter supported our proposal. Several others were concerned about its breadth, stating that Web-brokers do not have direct control over the entirety of a third-party agent or agency's Web properties.

Response: We are finalizing this proposal, with some modifications described below. We understand that there are various models under which a Web-broker may provide a third-party agent or broker with access to the direct enrollment pathway. For example, some

Web-brokers may allow an agent or broker to access the direct enrollment pathway exclusively through the Web-broker's non-Exchange Web site. Other web-brokers may provide a technological platform for the third-party agent's or broker's Web site to facilitate the exchange eligibility and enrollment processes, for example, through an embedded frame-based platform on the third-party agent's or broker's Web site. We clarify that this provision is primarily concerned with Web-broker and third-party agent and broker arrangements that utilize the latter approach, and with respect to the compliance of those third-party agent or broker Web sites with the applicable Web site standards detailed at § 155.220(c)(3). We believe that in such circumstances, the Web-broker should obtain adequate assurances from the downstream third party agent or broker that they will comply with the applicable Web site standards at § 155.220(c)(3) prior to permitting access to its non-Exchange Web site or ability to transact information with HHS to help an applicant complete the QHP selection process through the existing or enhanced direct enrollment pathways. Furthermore, HHS considers these arrangements to be an assignment of the Web-broker's rights and obligations under the Web-broker agreement with CMS. As such the Web-broker is required under the terms of the agreement to notify CMS and obtain prior, express written consent for such arrangements. Moreover, the third party agent or broker is responsible for compliance with the relevant provisions of the Web-broker's agreement with CMS; and the Web-broker is responsible for ensuring the third party agent's or broker's compliance with those provisions. Therefore, we are finalizing a requirement that Web-brokers ensure compliance with the applicable standards in § 155.220(c)(3) with respect to any Web pages of the third-party agent's or broker's Web site through which the third-party agent or broker assists consumers, applicants, qualified individuals, and enrollees in applying for APTC and cost-sharing reductions for QHPs or in completing the QHP selection or the Exchange eligibility application for QHPs offered in the Exchanges. We may require these downstream entities to enter into an agreement with HHS as a condition of CMS approval of such arrangements in order to ensure compliance with requirements that ensure the security of HHS systems. This process is one that HHS has used with any entity that requests such access.

Seventh, we noted in the proposed rule that we were considering different methods for completing the monitoring and audits authorized by § 155.220(c)(5). We discussed a model under which HHS, its designee, or an approved third party could perform the onboarding testing or audit. Where approved third parties perform onboarding reviews and audits, we stated that we anticipated that they would be approved by HHS and would need the capability to audit Web-brokers' ability to securely collect, maintain, and transmit eligibility application information in a manner determined by HHS and to otherwise review compliance with HHS rules. For third parties to be approved to conduct these activities, we stated that we expected that the auditor would need to submit an application to HHS demonstrating prior experience in verifying these sorts of capabilities, and, if approved, enter into an agreement with HHS governing the auditor's compliance with HHS audit and verification standards, interface with HHS systems, and data use. We stated that the auditor would be required to collect, store, and share data with HHS on these verifications, and protect that data in accordance with HHS standards, would be subject to monitoring and periodic certification by HHS, and would be compensated by the agents or brokers who engaged the auditor. We stated that if we were to allow third parties to perform such verifications, we would establish a process for evaluating and approving third party vendors in a manner similar to the one established in § 155.222. We solicited comment on our proposal to allow third parties to perform monitoring and audits authorized by § 155.220(c). We also solicited comment on whether we should establish a process for recognizing third parties to perform such monitoring, what protections are needed, and the factors HHS should consider in evaluating and approving organizations for this type of role.

Comment: All commenters were in favor of our proposal to allow third parties to perform monitoring and audits authorized by § 155.220(c). However, commenters requested that HHS ensure the auditors demonstrate compliance with standards to be defined by HHS. One commenter requested that HHS not impose any new requirements on Web-brokers to use third-party auditors until HHS makes enhanced direct enrollment available. Another commenter that noted support for asking agents and brokers to compensate an auditor if the agent or broker engages the auditor asked that in situations where HHS engages an auditor, HHS should compensate the auditor. One commenter expressed concern that third-party auditors may not be able to provide adequate and consistent oversight and that the cost of overseeing third-party auditors may not outweigh the cost of HHS conducting all oversight. One commenter requested that HHS evaluate whether third-party auditors have experience evaluating Web sites and systems from the perspective of diverse consumers.

Response: We are finalizing this proposal. Please refer to the discussion pertaining to § 155.221 in the preamble for more information on the specifics of this approach.

We proposed to amend § 155.220(j)(2)(i) to provide that an agent or broker that assists with or facilitates enrollment of qualified individuals in a manner that constitutes enrollment through an FFE or SBE–FP, or assists individuals in applying for APTC and cost-sharing reductions for QHPs sold through an FFE or SBE–FP, must refrain from having a Web site that HHS determines is likely to mislead consumers into believing they are visiting *HealthCare.gov*. For example, our experience shows that Web sites that utilize combinations of colors, text sizes, or fonts, similar to those used on *HealthCare.gov* have caused confusion among consumers. Web sites whose URL address or marketing name could suggest the Web site is owned or endorsed by *HealthCare.gov* would also be inappropriate. We believe that it is important to avoid consumer confusion around which Web sites are operated by an FFE or SBE–FP, and which ones are operated by issuers or agents or brokers. We solicited feedback on criteria for determining whether a Web site could reasonably cause confusion with a Federal program or Web site.

Comment: Most comments received on this topic were supportive of this proposal. However, many commenters also requested that HHS establish specific criteria for determining if a Web site is misleading. Several commenters requested that HHS adopt a ''totality of the circumstances approach.'' One commenter expressed concern that HHS would use a single criterion to trigger a determination (for example, a color or font). In addition, some commenters requested that HHS acknowledge that some entities have used words such as ''Exchange'' and ''Marketplace'' in their name or URL for years prior to the creation of the FFE, and that by maintaining their longstanding corporate identities, these Web sites may not inherently cause consumer

confusion. One commenter requested that HHS grandfather Web sites with such domain names.

Response: We are finalizing this provision as proposed. We do not intend for this requirement to target minor similarities to *HealthCare.gov,* but rather significant similarities that could mislead a consumer into believing they were enrolling directly through *HealthCare.gov.* As outlined in preamble to the 2017 Payment Notice,[50] we interpret § 155.220(j)(2)(i), which requires agents, brokers, and Web-brokers to refrain from marketing or conduct that is misleading, to require that agents, brokers, and Web-brokers avoid the use of the terms ''Marketplace'', ''Exchange,'' or other potentially misleading words in the name of a business or Web site if doing so could reasonably cause confusion with a Federal program or Web site. We intend to use a ''totality of the circumstances'' test for investigation and enforcement under this provision.

(4) Standards for HHS-Approved Vendors To Perform Audits of Agents and Brokers Participating in Direct Enrollment (§ 155.221)

In the proposed rule, we noted that we were considering different methods for completing the monitoring and audits authorized by § 155.220(c)(5). We also solicited comment on our proposal to allow third parties to perform monitoring and audits authorized by § 155.220(c) and the proposed establishment of a process to evaluate and approve such vendors in a manner similar to the one established in § 155.222.

After reviewing comments on our proposal, we are adding a new § 155.221 to establish an application and approval process for evaluating and approving third party audit vendors of Web-broker compliance with direct enrollment requirements. The process established under § 155.221 is designed to mirror the one for evaluating and approving third party vendors of FFE training for agents and brokers under § 155.222. Specifically, we are adding § 155.221(a)(1) to require that such a third party vendor must be approved by HHS, in a form and manner to be determined by HHS, to have its auditing services recognized for Web-brokers assisting with or facilitating enrollment in the individual market or SHOP coverage through the Exchanges consistent with § 155.220. In paragraph (a)(2), we establish an annual approval process. Similar to FFE training vendors, these auditor vendors will be approved for one-year terms, and organizations seeking to continue their recognition as HHS-approved vendors the following year will need to be reapproved through a process to be determined by HHS.

For a third party vendor to be approved by HHS to conduct these activities, we are adding § 155.221(b) to establish standards that a vendor must meet to be approved by HHS. In paragraph (b)(1), a vendor must submit a complete and accurate application by the deadline established by HHS that demonstrates prior experience and expertise in conducting auditing or similar services for a large customer base. We note that vendors eligible for recognition will need to demonstrate expertise in the areas implicated by the design of the current direct enrollment process and, later, by the design of the enhanced direct enrollment process that is still under development. HHS standards for vendors eligible for recognition will develop as the design of the enhanced direct enrollment process is finalized. Accordingly, we will issue further guidance or rulemaking on these standards if necessary.

We are adding § 155.221(b)(2) to require the vendor, in performing the services, to adhere to certain standards with respect to content, format, privacy and security, including by ensuring that Web-brokers are in compliance with the applicable privacy and security standards. We are adding § 155.221(b)(3) to require the vendor to collect, store, and share data with HHS from Web-broker users of the vendor's services in a manner specified by HHS, and protect that data in accordance with HHS standards. In paragraph (b)(4), we require approved vendors to permit any Web-broker registered with the FFEs to access the vendor's auditing services. We are also adding § 155.221(c) to provide that HHS may monitor and audit approved vendors and their records related to the audits described in this section to ensure ongoing compliance with the standards in this section. If HHS determines that the vendor is not in compliance, the vendor may be removed from the approved list described in paragraph (d) of this section and may be required to cease performing the functions described under this section.

In paragraph (d), once the approval process has been completed for a given year, HHS will publish a list of approved entities on an HHS Web site. Finally, in paragraph (e), we provide that a vendor may appeal HHS's decision (to either not approve an application or to revoke approval of a vendor) by notifying HHS in writing within 15 days of receipt of the notification of not being approved, or having its approval revoked, and submitting additional documentation demonstrating how the vendor meets the standards in paragraph (b) and (if applicable) the terms of their agreement with HHS. HHS will review the submitted documentation and make a final determination within 30 days from receipt of the submission of the additional documentation.

(5) General Standards for Exchange Notices (§ 155.230)

Section 155.230 outlines standards for notices required to be sent by the Exchange to individuals or employers. We proposed amending paragraph § 155.230(d)(2) to make electronic notices the default method for sending notices required to be sent by SHOP Exchanges,[51] unless otherwise required by Federal or State law. The proposed amendment would make mailed paper notices optional, at the election of the employer or employee, as applicable, unless other Federal or State law prohibits making paper notices optional. This change was proposed in response to feedback from SHOP consumers and issuers indicating a preference for electronic notices. In addition, electronic notices provide a more cost effective way for SHOPs to distribute required notices. However, HHS is aware that some employees and employers may still prefer mailed paper notices and therefore proposed that paper notices distributed through standard mail would continue to be available for those that select paper notices as the preferred method of communication. Employers and employees participating in FF–SHOPs or in SBE–FPs utilizing the Federal platform for SHOP functions will continue to be able to select their preferred communication method when completing the eligibility applications online at *HealthCare.gov.* HHS also notes that SHOPs might be required to provide notices in a particular format in order to comply with the obligation to perform effective communication with an individual with a disability under the Americans with Disabilities Act of 1990, section 504 of the Rehabilitation Act, or section 1557 of the Affordable Care Act. HHS also noted that this amendment would not change the requirement that a SHOP comply with

[50] See 81 FR 12263 (March 8, 2016).

[51] See Federally-facilitated Marketplace (FFM) and Federally-facilitated Small Business Health Options Program (FF–SHOP) Enrollment Manual available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/ENR_FFMSHOP_Manual_080916.pdf,* for a list of the FF–SHOP Exchange notices.

the requirements for electronic notices in 42 CFR 435.918(b)(2) through (5) for the employer or employee. We sought comment on this proposal.

HHS also proposed to add a new paragraph § 155.230(d)(3) to give individual market Exchanges and SHOPs flexibility to send notices through standard mail, even if an election was made to receive electronic notices, if an individual market Exchange or SHOP is unable to send electronic notices due to technical limitations. Our regulation currently requires that individual market Exchanges send required notices according to an individual's or employer's selected preference. Our proposed amendment to paragraph (d)(2) would require that a SHOP provide electronic notices unless paper notices are selected as the preferred communication method, or unless otherwise required by State or Federal law. However, HHS recognizes that some Exchanges or SHOPs may have technological limitations that prevent them from sending certain notices electronically. In these situations, HHS proposed to provide flexibility for an individual market Exchange or SHOP to notify the individual, employee, or employer through standard mail. HHS encouraged individual market Exchanges or SHOPs that might need to exercise this option to explain to individuals, employees, or employers that some required notices may be sent through standard mail. HHS further encourages these individual market Exchanges and SHOPs to conduct additional outreach with individuals, employees, and employers, as needed, in order to ensure their understanding that they may receive certain notices via standard mail.

We are finalizing these amendments as proposed.

Comment: Some commenters supported the proposal to make electronic notices the default method of communication in the SHOPs. One commenter did not support the proposal due to concerns about consumers who lack adequate internet access. One commenter also recommended that copies of electronic notices to employers also be provided to any certified health insurance agent or broker assisting an employer with its SHOP coverage. One commenter supported the proposal to add flexibility to send notices by postal mail when technical limitations prevent an Exchange from sending notices electronically. Two commenters did not support our proposal at § 155.230(d)(3) because of its potential to conflict with Exchange obligations to provide effective communication in compliance with the Americans with Disabilities Act of 1990, section 504 of the Rehabilitation Act, or section 1557 of the Affordable Care Act. We received one comment that consumers should be alerted to expect paper communications from the Exchange if the Exchange needed to use the flexibility provided by § 155.230(d)(3). The commenter expressed concern that if a consumer opts to receive information electronically, the consumer will not be expecting communication in any other manner.

Response: We are finalizing the amendments as proposed. Because employers and employees will continue to be able to elect to receive paper notices, consumers without internet access will not be adversely impacted by the amendments at § 155.230(d)(2). We note that in FF–SHOPs and SBE–FPs using the Federal platform for SHOP functions, if Federal or State law requires that a SHOP send a notice through a method that is not electronic, HHS will ensure that the notice is sent through the required means. Due to operational limitations, the FF–SHOPs and SBE–FPs utilizing the Federal platform for SHOP functions are not currently able to provide copies of electronic notices to any FFE-registered health insurance agent or broker assisting an employer with its FF–SHOP coverage. State-based SHOPs may elect to provide copies of electronic notices to licensed health insurance agents or brokers assisting employers and enrollees with SHOP coverage. Exchanges will still be required to meet effective communication requirements under the Americans with Disabilities Act of 1990, section 504 of the Rehabilitation Act, or section 1557 of the Affordable Care Act. Further, we encourage individual market Exchanges or SHOPs that need to send paper notices due to technical limitations to perform additional outreach, as needed, so the individual, employee, or employer is alerted to the paper notices. The Federal platform has a variety of means of communication when electronic means are not available, including communication through the call center, which will help Exchanges using the Federal platform to comply with notice requirements for persons with disabilities.

(6) Payment of Premiums (§ 155.240)

We sought comment regarding the scope of any potential problem related to unexpected electronic funds transfer (EFT) withdrawal amounts, especially when an enrollee stops receiving the benefit of APTC. For individuals who have agreed to pay premiums via EFT, such a change in subsidy amount could mean the withdrawal of a larger-than-expected amount from the enrollee's bank account, resulting in financial hardship. We also sought comment on stakeholders' experiences with these transactions. Finally, we sought comment on industry best practices, State regulations in this area, and whether Federal rulemaking, such as reversal or termination of EFTs with or without simultaneous paper-billing, is needed.

Comment: Several commenters approved of rulemaking to protect consumers who have larger-than-expected EFT amounts withdrawn from their accounts, stating that severe financial consequences can result from such an unexpectedly large withdrawal, but several commenters opposed such rulemaking. Some commenters stated that Federal rules would be harmful to industry innovation or duplicative of existing regulatory schemes that already protect consumers from the danger of unexpectedly large EFT withdrawals. Other commenters feared that additional Federal regulation might cause issuers to take actions that might conflict with existing State laws. Some commenters expressed concerns that further regulation would limit their flexibility to assist their customers, pose operational problems for their billing systems, and would rely on vague standards to define what amount of change in EFT amounts would trigger a remedy for consumers. A few commenters stated that better communication between the FFEs, SBEs, and SBE–FPs and their consumers would be a superior solution to the problem. One of these commenters stated, however, that standard noticing requirements would force issuers to utilize different notices for consumers in different product or business groups, causing unnecessary administrative complexities and costs.

Response: We appreciate the comments related to this issue, and recognize that any solution must take into account the operational needs of industry partners, the wellbeing of consumers, and existing State and Federal regulations. We also realize that issuers have different procedures in place to provide notice to enrollees affected by a larger-than-expected EFT withdrawal and to avoid potential consumer hardship. We will continue, in conjunction with our governmental and industry partners, to examine all methods of preventing consumer harm from unexpectedly large EFT withdrawals.

c. Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

(1) Eligibility Standards (§ 155.305)

Comment: In response to the proposed rule at § 155.330(e)(2), a number of commenters raised issues relating to ongoing challenges for consumers and Exchanges in implementing the requirement at § 155.305(f)(4) that Exchanges not determine a consumer eligible for APTC if APTC payments were made on behalf of the tax filer for the consumer's household (or either spouse, if the tax filer is a married couple) for a previous year and the tax filer or his or her spouse did not comply with the requirement to file an income tax return and reconcile APTC received for a previous year. The commenters stressed the importance of Exchanges implementing the requirement in a manner that clearly notifies tax filers regarding possible risk to their eligibility for APTC. One commenter stated it was important to explain to the consumer how to correct the problem and regain APTC eligibility, and to provide timetables for action, and to provide this information within the bounds of IRS privacy rules, which limit the disclosure of Federal tax information. In addition, some commenters discussed Exchanges' challenges in accurately assessing whether a tax filer has met this requirement at the time of the eligibility determination due to the time needed to process a Federal income tax return and make information about the return available to the Exchange. One commenter stated it was important to provide Exchanges with flexibility to allow consumers to attest to having filed a tax return in order to overcome delays in processing and data availability. Another commenter supported any options that would provide more flexibility to Exchanges to determine how to continue enrollment with APTC when IRS is not able to confirm that the tax filer has complied with the filing and reconciliation requirement, such as by submitting a copy of a filed tax return.

Response: We agree that targeted and detailed messaging to tax filers that highlights the specific requirement to file an income tax return and reconcile APTC paid on their behalf—and the potential adverse impact on APTC eligibility for future coverage years—is essential. In addition, we recognize the need for Exchange flexibility in enforcing the requirement under § 155.305(f)(4). Accordingly, we have restructured § 155.305(f)(4), moving previous paragraph (f)(4) to new paragraph (f)(4)(i), and adding paragraph (ii). In new paragraph § 155.305(f)(4)(ii), we are providing that eligibility for APTC may not be denied under this paragraph unless a direct notification is first sent to the tax filer, consistent with the standards set forth in § 155.230, that his or her eligibility will be discontinued as a result of the tax filer's failure to comply with the requirement specified under § 155.305(f)(4)(i).

We also agree that providing a consumer the opportunity to either attest that the tax filer in the consumer's tax household has filed an income tax return and reconciled APTC paid on the tax filer's behalf for a previous benefit year, or to submit documentary proof of filing, can protect compliant tax filers from erroneously losing APTC because of data processing and reporting delays. Section 155.305(f)(4) should not be construed to require an Exchange to follow the procedures in § 155.315(f) for the purposes of verifying whether a tax filer meets the requirements of § 155.305(f)(4).

(2) Eligibility Redetermination During a Benefit Year (§ 155.330)

We proposed to amend § 155.330(d)(1)(ii) to require the Exchange to periodically examine data sources for information on either eligibility determinations for or enrollment in certain government health programs, including Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), for Exchange enrollees on whose behalf APTC or the cost-sharing reduction portion of advance payments are being paid. Currently, paragraph (d)(1)(ii) requires the Exchange to periodically examine available data sources only for eligibility determinations for the specified government programs. We proposed that Exchanges should consider which data source best meets the criteria of timeliness, accuracy, and availability when deciding whether to examine data sources for eligibility determinations or enrollment information, noting that the proposed flexibility may be particularly valuable if data on eligibility determinations (as distinct from enrollment) are not available.

We also proposed to add a new paragraph § 155.330(e)(2)(iii) regarding redetermination and notifications of eligibility for APTC related to compliance with the income tax filing and reconciliation requirement under § 155.305(f)(4). Due to certain operational and legal impediments described in the proposed rule, we noted that specific procedures for handling these redeterminations may be warranted that balance Exchange operational flexibility, the need for program integrity protections, and procedural protections for enrollees and tax filers. Therefore, we proposed to require an Exchange to choose among three options when the Exchange identifies updated information regarding compliance with the income tax filing and reconciliation requirement: (A) Follow the periodic data matching procedures specified in paragraph (e)(2)(i); (B) follow alternative procedures specified by the Secretary in guidance; or (C) follow an alternative process proposed by the Exchange and approved by the Secretary based on a showing that the process meets specified approval criteria.

Finally, in paragraph (g), we proposed to allow alternate methods of recalculating APTC during the benefit year, based on Exchange feedback and the need to account for differences in Exchange systems and mitigate complexities. We proposed that for coverage years through 2023, the Exchange may recalculate APTC in accordance with an eligibility redetermination under § 155.330 using an alternate method approved by the Secretary, instead of as currently provided under § 155.330(g). Approval would require a showing by the Exchange that the alternative procedure provides adequate program integrity protections, minimizes administrative burden on the Exchange, and limits negative impacts on consumers, where possible.

We are finalizing the changes to § 155.330 paragraphs (d)(1)(ii) and (e)(2)(i) and adding new paragraph (e)(2)(iii) as proposed. For paragraph (g), we are removing the time limit associated with the proposal and are otherwise finalizing the provision as proposed.

Comment: Commenters supported our proposal to require the Exchange to periodically examine data sources for information on either eligibility determinations for or enrollment in certain government health programs. Commenters noted that the proposed change could help ensure consumers are enrolled in the correct health program and minimize enrollment in duplicate coverage. Other commenters noted that the proposed rule, if finalized, could help State-based Exchanges avoid costly system updates. One commenter suggested that the Exchange periodically examine data sources for information on both eligibility for and enrollment in the specified government programs.

Response: We agree that this policy may help consumers enroll in the correct type of health coverage, minimize duplicate enrollment, and provide flexibility for State-based Exchanges. We believe that the Exchange should have the flexibility to periodically examine data sources for information on eligibility for or enrollment in the specified government programs, or both, provided that data sources meet the criteria of timeliness, accuracy, and availability.

Comment: One commenter recommended that the Exchange begin periodically examining data sources for information on either eligibility determinations for or enrollment in Medicare for Exchange enrollees on whose behalf APTC or the cost-sharing reduction portion of advance payments are being paid.

Response: The FFEs have begun conducting periodic data matching, as described in § 155.330(d), to identify Exchange enrollees on whose behalf APTC or the cost-sharing reduction portion of advance payments are being paid who may be enrolled in Medicare that is considered minimum essential coverage. A sample notice sent for such Exchange enrollees is available at *https://marketplace.cms.gov/applications-and-forms/medicare-pdm-notice.pdf*.

Comment: One commenter recommended that the Exchange periodically examine data sources to verify offers of employer-sponsored coverage, and sought guidance on the subject.

Response: This comment is beyond the scope of the proposed rule, which did not address periodic data matching for verification of enrollment in an eligible employer-sponsored plan and eligibility for qualifying coverage in an eligible employer-sponsored plan. Exchange regulations at § 155.320(d) describe the process of verification related to enrollment in an eligible employer-sponsored plan and eligibility for qualifying coverage in an eligible employer-sponsored plan. Exchange regulations do not require periodic examination of such data sources.

Section 155.320(d)(2) requires the Exchange to obtain data about enrollment in and eligibility for an eligible employer-sponsored plan from any electronic data sources that are available to the Exchange and that have been approved by HHS based on evidence showing that such data sources are sufficiently current, accurate, and minimize administrative burden; from any data sources covering employer-sponsored coverage based on Federal employment using verification data obtained by HHS; and from any data sources about SHOP coverage using any available data from the SHOP that corresponds to the State in which the Exchange is operating. Section 155.320(d)(4) provides that for any benefit year for which the Exchange does not reasonably expect to obtain sufficient verification data as described in paragraph (d)(2) of that section, the Exchange must conduct a process referred to as ''sampling'' described in paragraph (d)(4)(i), or for benefit years 2016 and 2017, an alternate process approved by HHS as described in (d)(4)(ii).

For 2016, the FFE conducted an alternate process that included many components of sampling. It involved contacting certain employers to inquire whether specified employees who were determined eligible for Exchange financial assistance and enrolled in a QHP through the Exchange were enrolled in an eligible employer-sponsored plan or were eligible for qualifying coverage in an eligible employer-sponsored plan for the 2016 plan year. The goal was to help the FFE ascertain if sampling is an effective method of examining whether employees correctly attest to their enrollment in and eligibility for qualifying coverage in an eligible employer-sponsored plan and the effectiveness of the FFE's verification efforts.

We expect Exchanges to develop such alternate processes to gain insight into whether employees provide accurate information on their application for coverage through the Exchange regarding enrollment in and eligibility for qualifying coverage in an eligible employer-sponsored plan and the effectiveness of an Exchange's verification of such information. Our hope is that these alternate processes provide insight and information allowing the Exchange to move closer to an effective method of verification related to enrollment in and eligibility for qualifying coverage in an eligible employer-sponsored plan.

Comment: Of the commenters that commented on our proposal at § 155.330(e)(2)(iii), all were supportive of the proposal, which proposed flexibility for Exchanges when periodically obtaining data from IRS regarding tax filers' compliance with the requirement to file income tax returns and reconcile APTC paid on their behalf for previous benefit years. Overall, commenters expressed support for the proposal's flexibility in accounting for differences in Exchange systems and mitigating Exchange burden and complexity, while providing adequate program integrity protections and limiting negative impacts on consumers.

Response: We agree that the proposed rule at § 155.330(e)(2)(iii) would help address the challenges Exchanges and consumers have experienced with periodic APTC eligibility redetermination related to tax filing and APTC reconciliation status. Therefore, in response to comments, we are finalizing new paragraph § 155.330(e)(2)(iii) as proposed, which provides flexibility to Exchanges when periodically obtaining data from IRS regarding tax filers' compliance with the requirement to file tax returns and reconcile APTC paid on their behalf for previous benefit years. We believe that these options will effectively allow Exchanges to select the best way for them to comply with these APTC eligibility redetermination requirements related to tax filing status in a manner that reduces administrative complexity and burden and minimizes confusion and other negative effects on consumers, while providing adequate program integrity protections.

Comment: We received comments both in support of and against the proposed amendment to paragraph (g) to allow alternate methods of recalculating APTC during the benefit year through 2023. Commenters in support noted the potential to accommodate for different Exchange systems and mitigate complexities. Commenters against the proposal expressed concern that an alternate method of recalculating APTC during the benefit year may harm consumers if it does not take into account APTC already paid on the tax filer's behalf and results in a tax liability for the tax filer. One commenter suggested that the option to implement an alternative procedure should end before 2023. A few commenters requested that we provide more information on the approval criteria and methodologies by which an alternative procedure would be evaluated.

Response: We take seriously commenters' concerns about the potential harm to consumers if an alternate method of recalculating APTC during the benefit year does not take into account APTC already paid on the tax filer's behalf. We proposed that, in order for an alternate method of recalculating APTC during the benefit year to be approved by the Secretary, the Exchange must show, among other criteria, that the alternative method limits negative impacts on consumers where possible. This criterion is intended to protect tax filers from increased tax liability as a result of recalculating APTC during the benefit year as well as any other unintended

consequences, and will be weighed along with the other two criteria—providing adequate program integrity protections and minimizing administrative burden on the Exchange. We also note that certain tax filers whose APTC for the taxable year exceeds their premium tax credit may be subject to statutory repayment caps that limit their excess APTC repayment liability.

We are finalizing this rule so that the alternative method described in paragraph (g)(1)(ii) is available for all benefit years. We received one comment recommending that the alternate method sunset before 2023. We did not receive any other comments for or against the proposed sunset date. Upon further consideration of this issue, we believe that establishing a sunset date based on currently available information would be premature as we do not yet know how long Exchanges may need to mitigate system complexities. We will continue to evaluate the future need for an alternative method of recalculating APTC during the benefit year as Exchange systems develop.

Finally, we will consider providing additional guidance about the approval criteria and methodologies that the Secretary will use to evaluate alternative procedures for recalculating APTC during the benefit year.

d. Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans

(1) Enrollment of Qualified Individuals Into QHPs (§ 155.400)

We proposed to amend § 155.400 to add additional flexibility to the binder payment rules. Specifically, we proposed to add § 155.400(e)(2) to give Exchanges the discretion to allow issuers experiencing billing or enrollment problems due to high volume or technical errors to implement a reasonable extension of the binder payment deadlines the issuer has set under § 155.400(e)(1). We proposed that the FFEs and SBE–FPs will, and State Exchanges may, allow these reasonable extensions which, in the case of most high volume situations or technical errors, we would not expect to be more than 45 calendar days' duration. Based on our experience from multiple open enrollment periods, billing or enrollment problems, particularly in cases where an issuer experienced technical errors or a processing backlog caused by a large volume of enrollments, can affect enrollees' ability to submit timely binder payments. We believe providing issuers with the option to allow reasonable binder payment deadline extensions, which must be implemented in a uniform and nondiscriminatory manner, would prevent enrollees from having their coverage cancelled due to non-payment when those enrollees did not have adequate time to make their binder payments and appropriately balances issuer flexibility and consumer protectiveness. We are finalizing this provision as proposed.

We also proposed to specify that all binder payment rules, including the proposed amendment in § 155.400(e), apply to SBE–FPs in addition to FFEs. We believe that all entities on the Federal platform should utilize the same binder payment rules in order to simplify operational implementation of enrollment processing and confirmation using the Federal platform, and consider these rules to fall within the regulations pertaining to issuer eligibility and enrollment functions with which a QHP must comply in order to participate in an SBE–FP, under § 156.350. We are also finalizing this provision as proposed and are adding regulation text at § 156.350(a)(4) to reflect this amendment.

Additionally, in the preamble to § 156.270 in the 2017 Payment Notice, we stated as part of our interpretation of § 156.270(d) that a binder payment is not necessary when an enrollee enrolls, either actively or passively without a gap in coverage, in a plan within the same insurance product. We understand that this may be different than some issuers' practices prior to the Affordable Care Act and that issuers may have operational challenges in distinguishing between enrollment in the same product versus a different product. To minimize operational concerns, we sought comment on whether we should amend the binder payment requirement in § 155.400(e) to not require a binder payment when a current enrollee enrolls, either actively or passively, in any plan with the same issuer—not only a plan within the same product—and on the appropriate timeframe for making such a change. After considering the comments we received related to this proposed policy, we are not finalizing the proposed policy; we will continue to examine this issue.

Comment: Most commenters supported our proposed rule to give Exchanges the discretion to allow issuers experiencing billing or enrollment problems due to high volume or technical errors to implement a reasonable extension of the binder payment deadlines the issuer has set under § 155.400(e)(1). These commenters observed that the proposed rule balances flexibility for issuers and consumer protection and could help to avoid enrollment cancellations and other problems, which often result in time-consuming fixes such as retroactive coverage reinstatements. Some commenters supported the proposed rule but sought an expanded version, which would allow issuers the flexibility to extend consumer's binder payment deadlines under a greater variety of situations. One commenter opposed the proposed rule as an interference with issuers' ability to make business decisions related to billing. The commenter also expressed concern that the proposed rule might complicate the logic used in issuers' billing systems, and recommended that HHS rely on issuer initiatives and State rules to provide consumer protection. One commenter expressed concern that the proposed rule would cause undue complications for issuers operating in different States.

Response: We agree that the extension, when implemented uniformly at the option of an issuer experiencing processing backlogs or technical errors during enrollment, will help to protect consumers from unnecessary coverage cancellations while giving issuers flexibility in billing and consumer outreach. We believe that the limits imposed by the proposed rule provide the necessary balance between flexibility for issuers and consumer protection. We do not agree that the proposal will interfere with issuers' billing prerogatives or cause complications for issuers operating in different States, since it makes adoption of the binder payment deadline extensions optional, and allows for flexibility in implementation.

Comment: All of the comments received that related to applying all binder payment rules to SBE–FPs in addition to FFEs expressed support for the proposal.

Response: We are finalizing the proposal to extend the binder payment rules to the SBE–FPs as written.

Comment: Some commenters supported the proposal to treat as a renewal, meaning no effectuation (binder payment) would be necessary, a consumer's re-enrollment in any plan with the same issuer. The commenters believed that such a policy would be more easily understood by consumers, prevent avoidable gaps in coverage, and adhere to many issuers' long-standing approach to premium billing. However, several commenters were critical of the proposal, with some expressing concern that relaxation of binder payment rules could lead to financial risks on the part of issuers. Other commenters stated that paying the binder payment for coverage

constitutes an affirmative statement that the consumer wants coverage with the issuer. Still other commenters requested that the enrollment rules be amended to require full payment of all premium owed to an issuer by a consumer before that consumer can re-enroll in coverage with the same issuer.

Response: We appreciate the comments related to this proposed policy. Due to the uncertain effects of this policy on consumer enrollment and payment of premiums, we are declining to finalize the policy at this time.

(2) Special Enrollment Periods (§ 155.420)

Special enrollment periods, a longstanding feature of employer-sponsored coverage, exist to ensure that people who lose health insurance during the year, or who experience other qualifying events, have the opportunity to enroll in coverage. We are committed to making sure that special enrollment periods are available to those who are eligible for them and equally committed to avoiding any potential misuse or abuse of special enrollment periods.

In 2016, we added warnings on *HealthCare.gov* about inappropriate use of special enrollment periods, eliminated special enrollment periods that are no longer needed as the Exchanges mature, and tightened eligibility rules for special enrollment periods. In addition, we introduced a Special Enrollment Confirmation Process under which consumers enrolling through the most common special enrollment periods are directed to provide documentation to confirm their eligibility for their special enrollment period.

We have heard competing concerns about how these actions are affecting the Exchange risk pools. Some have stated that additional changes are needed to prevent individuals from misusing special enrollment periods to sign up for coverage only after they become sick. Others have stated that any differential costs for the special enrollment period population reflect the very low take-up rates for special enrollment periods among eligible individuals. They claim that verification processes worsen the problem by creating new barriers to enrollment, with healthier, less motivated individuals, the most likely to be deterred.

In the proposed 2018 Payment Notice, we sought comment on these issues, especially on data that could help distinguish misuse of special enrollment periods from low take-up of special enrollment periods among healthier eligible individuals, evidence on the impact of eligibility verification approaches, including pre-enrollment verification, on health insurance enrollment, continuity of coverage, and risk pools (whether in the Exchange or other contexts), and input on what special enrollment period-related policy or outreach changes could help strengthen risk pools.

We also sought comment on similar concerns about potential gaming and adverse selection that could result from the grace period for payment of premiums for qualified individuals receiving APTC, noting the limited regulatory options available to change grace period policy. We examined attrition rates in our enrollment data. We have found that the attrition rate for any particular cohort is no different at the end of the year than at points earlier in the year, suggesting that any such gaming, if it is occurring, does not appear to be occurring at sufficient scale to produce statistically measurable effects.

We stated that we seek to ensure transparency, stability, and appropriate utilization of special enrollment periods by codifying certain special enrollment periods that were made available through prior guidance. Therefore, in order to provide clarity and certainty to all stakeholders, we proposed to codify:

- Paragraph (d)(8)(ii) for the special enrollment period for dependents of Indians who are enrolled or are enrolling in a QHP through an Exchange at the same time as an Indian;
- Paragraph (d)(10) for the special enrollment period for victims of domestic abuse or spousal abandonment and their dependents who seek to apply for coverage apart from the perpetrator of the abuse or abandonment;
- Paragraph (d)(11) for the special enrollment period for consumers and their dependents who apply for coverage and are later determined ineligible for Medicaid or CHIP;
- Paragraph (d)(12) for the special enrollment period that may be triggered by material plan or benefit display errors on the Exchange Web site, including errors related to service areas, covered services, and premiums; and
- Paragraph (d)(13) for the special enrollment period that may be triggered when a consumer resolves a data matching issue following the expiration of an inconsistency period or has an annual household income under 100 percent of the Federal poverty level and did not enroll in coverage while waiting for HHS to verify that he or she meets the citizenship, national, or immigration status described in section 1401(c)(1)(A)(ii) of the Affordable Care Act.

We proposed to codify the special enrollment period for dependents of Indians who are enrolling at the same time as the Indian, as defined by section 4 of the Indian Health Care Improvement Act, in paragraph (d)(8)(ii) so that Indians and non-Indian members of the household may maintain the same coverage and so that this special enrollment period is consistently applied across Exchanges. This special enrollment period has enabled mixed status Indian families to enroll in or change coverage together through the Exchange. We proposed to codify the special enrollment period for victims of domestic abuse or spousal abandonment in paragraph (d)(10) so that, as specified in July 2015 guidance,[52] victims of domestic abuse or spousal abandonment, along with their dependents, can enroll in coverage separate from their abuser or abandoner. This special enrollment period has provided a needed pathway to new coverage for consumers in these situations. We proposed to codify the special enrollment period for consumers who apply for coverage during the Exchange annual open enrollment period or due to a qualifying event and are determined ineligible for Medicaid or CHIP in paragraph (d)(11), so that consumers who applied for coverage when they were eligible to do so can ultimately enroll in coverage through the Exchange. This special enrollment period has ensured that consumers have a pathway to coverage when they have been assessed as potentially eligible for Medicaid or CHIP, but are ultimately determined ineligible. We proposed to codify the special enrollment period for material plan or benefit display errors in paragraph (d)(12), so that consumers who enrolled in a QHP offered through the Exchange based on incorrect plan or benefit information can select a new QHP that better suits their needs. We proposed to codify the special enrollment period for data matching issues that are cleared after the deadline for resolution has passed or, for those with an annual household income under 100 percent of the Federal poverty level, meet the citizenship, national, or immigration status described in section 1401(c)(1)(A)(ii) that is verified through the data matching process in paragraph (d)(13), so that consumers who submit required documents to prove that they are

[52] Department of Health & Human Services. ''Updated Guidance on Victims of Domestic Abuse and Spousal Abandonment.'' July 27, 2015. Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Updated-Guidance-on-Victims-of-Domestic-Abuse-and-Spousal-Abandonment_7.pdf.*

qualified individuals or that they qualify for APTC, may enroll in coverage through the Exchange. This special enrollment period has enabled consumers who are not able to submit required documents prior to the deadline associated with their data matching issue or those who were not able to receive an eligibility determination for APTC until verifying that they meet the citizenship, national, or immigration status described in section 1401(c)(1)(A)(ii) to enroll in coverage upon submitting sufficient documents. We sought comments on these proposals to codify existing special enrollment periods.

We also proposed to make a variety of technical corrections to correct punctuation in paragraphs (d)(1)(i) and (iii), and to update the cross-references in paragraph (b)(2)(iii) (regarding coverage effective dates) to reflect the applicable newly codified special enrollment periods. All of these changes reflect existing FFE practice in implementing special enrollment periods authorized by the Affordable Care Act and existing regulations, and do not create new special enrollment periods for consumers.

We noted that certain special enrollment periods in § 155.420 are incorporated into the individual market guaranteed availability regulations at § 147.104(b) and apply to all issuers offering non-grandfathered individual market coverage, whether through or outside of an Exchange. Additionally, certain special enrollment periods in § 155.420 also apply in the SHOPs and are incorporated into the SHOP regulations at §§ 155.725(j) and 156.285(b). Except for the proposed additions of paragraphs (d)(8)(ii) and (d)(13), which are applicable only with respect to coverage offered through an Exchange, the proposed changes to special enrollment periods would apply throughout the individual market, and we therefore proposed conforming amendments to § 147.104(b). We sought comment on this approach to aligning the proposed amendments with the individual-market-wide and SHOP special enrollment periods.

We are finalizing these policies as proposed, with the addition of paragraph (b)(5) in response to comments to give the consumer the option for a later coverage effective date when an Exchange's verification of eligibility for a special enrollment period would cause a consumer to pay two or more months in retroactive premiums. We also modify § 147.104(b)(2) to make clear that the special enrollment period for material plan or benefit display errors in paragraph (d)(12) only creates an opportunity to enroll in coverage through the Exchange. Additionally, we finalize a modification to clarify that the income we are referring to in paragraph (d)(13) is annual household income.

Comment: The majority of commenters supported our proposal to codify the existing special enrollment periods for (1) dependents of Indians on the same application as the Indian at § 155.420(d)(8)(ii); (2) victims of domestic abuse or spousal abandonment at § 155.420(d)(10); (3) Medicaid or CHIP denials at § 155.420(d)(11); (4) material plan or benefit display errors at § 155.420(d)(12); and (5) data matching issues that are cleared post-expiration of an inconsistency period or individuals who are verified through the data matching process to meet the citizenship, national, or immigration criteria described in section 1401(c)(1)(A)(ii) of the Affordable Care Act at § 155.420(d)(13). Commenters appreciated the transparency of adding these special enrollment periods to regulation, so that consumers, regardless of the State in which they live, have access to the same special enrollment periods, and that all individuals involved in enrollment assistance have a better understanding of the special enrollment periods that are available. In addition, one commenter requested that all available special enrollment periods be codified and another commenter wanted to confirm that HHS retains its authority to codify additional special enrollment periods in the future, if needed.

However, some commenters opposed our proposal to codify additional special enrollment periods. These commenters expressed concern that some of the proposed special enrollment periods are no longer needed or that individuals who might qualify for one of these special enrollment periods may also qualify for another special enrollment period that already exists in regulation. Commenters expressed concern that codifying these special enrollment periods would extend them to both State-based Exchanges and the off-Exchange market and recommended that HHS develop additional methods for handling operational issues outside of creating new special enrollment periods. A few commenters recommended that HHS continue to focus on eliminating and further streamlining special enrollment periods so that special enrollment periods on the Exchange more closely align with those in other coverage programs, such as Medicare or those found in HIPAA and related regulations. Finally, one commenter expressed concern that HHS is amending its rule at § 155.420 prior to releasing results from the Special Enrollment Confirmation Process.

Response: We agree with commenters about the benefit of codifying these five special enrollment periods and that doing so provides clarity for stakeholders and consumers across Exchanges. We also agree that consumers who experience these qualifying events should have access to the same special enrollment periods, regardless of the State that they live in. We clarify that by codifying these five special enrollment periods, we are putting into regulation all special enrollment periods that have been consistently needed and utilized by the FFEs. In an effort to increase transparency, we believe it is essential to ensure awareness that all special enrollment periods continually being utilized by the Exchanges are explicitly stated in regulation.

In addition, we believe that codifying these special enrollment periods provides increased stability to the Exchange market. However, as the health insurance market continues to evolve and consumer needs change, we will continue to monitor the utilization of these and other special enrollment periods in order to identify opportunities to further streamline available special enrollment periods in the future. For now, we believe that all of the special enrollment periods currently in regulation, and those being finalized in this rulemaking, are needed.

Comment: Commenters expressed strong support for codifying the special enrollment period for dependents of Indians in paragraph (d)(8)(ii), so that mixed status Indian families may have access to the same special enrollment periods regardless of the State in which they live. One commenter requested that we expand the definition of Indians to include State-recognized tribes. Another commenter requested an explanation of whether a dependent of an Indian must be enrolled in the same QHP as the Indian and whether this special enrollment period impacts the special benefits available to Indians.

Response: We agree with commenters that codifying this special enrollment period for dependents of Indians ensures that all mixed status Indian families have the same ability to enroll in or change QHPs and we believe that this provides an important protection for all mixed status Indian families across the country. Section 1311(c)(6)(D) of the Affordable Care Act defines Indians by cross-referencing section 4 of the Indian Health Care Improvement Act, which limits the definition of Indians to members of Federally

recognized tribes or Alaska Native Claims Settlement Act Shareholders. Thus, legislative action would be necessary to change that definition to include State-recognized tribes.

We clarify that codifying this special enrollment period does not amend any of the rules for special benefits available to Indians, including their ability to qualify for additional cost-sharing reductions, as described at section 1402(d). In order to qualify for this special enrollment period, a dependent of an Indian must be on the same application as the Indian and enrolling in or changing QHPs at the same time as the Indian. However, it is not a requirement of this special enrollment period that the dependent of the Indian and the Indian enroll in the same QHP. This is because we recognize that adding a requirement that the Indian and his or her dependent enroll in the same QHP may result in the Indian forfeiting any special Indian cost-sharing reductions he or she is entitled to.

Comment: Commenters supported codifying the special enrollment period for victims of domestic abuse and spousal abandonment at § 155.420(d)(10); however, one commenter requested clarification on when a consumer could qualify for this special enrollment period.

Response: Qualified individuals who are victims of domestic abuse or spousal abandonment may qualify for this special enrollment period when they need to enroll in coverage apart from their abuser or abandoner. For victims of domestic abuse or spousal abandonment who are married to their abuser or abandoner and wish to receive an eligibility determination for financial assistance, this should also coincide with a change in tax filing status. Additional information about this special enrollment period is available in our Updated Guidance on Victims of Domestic Abuse and Spousal Abandonment published on July 27, 2015.[53]

Comment: We received strong support for codifying the special enrollment period for material plan or benefit display errors at § 155.420(d)(12) because it provides needed protections to consumers who may have been misled when deciding which QHP to enroll in. Some commenters requested that we expand this special enrollment period to include errors to provider directories and drug formularies, as well as to errors on the Web sites of Web-brokers. A few commenters requested that we further define material plan or benefit display errors and expressed concern about this special enrollment period applying off-Exchange.

Response: We agree with commenters that codifying the special enrollment period for material plan or benefit display errors through the Exchange provides consumers an opportunity to select a new QHP that better meets their health coverage needs, if there was a material plan or benefit display error that impacted their earlier health coverage decision. We also believe that codifying this special enrollment period clarifies that the notice requirement at § 156.1256 only pertains to this type of error. However, we clarify that this special enrollment period is limited to plan or benefit display errors, such as those related to plan benefits, service area, or premium, presented to the consumer by the Exchange at the point at which he or she enrolls in a QHP. By this we mean that the consumer must have already completed his or her Exchange application, the Exchange must have determined that the consumer is eligible for Exchange coverage and any applicable APTC or cost-sharing reductions, and the consumer must have viewed this error while making a final selection to enroll in the QHP. In order to qualify for this special enrollment period, consumers must demonstrate to the Exchange that this error impacted his or her decision to purchase a QHP.

We clarify that QHP plan or benefit information is considered to be material for purposes of this special enrollment period if that information was actually displayed by the Exchange after the consumer received a final eligibility determination and was otherwise reasonably close in time to the point at which he or she enrolled in the QHP. Because plan information displayed on *HealthCare.gov* or other Exchange Web sites, or any plan or benefit information otherwise available from Exchanges or issuers may be revised at various times if errors are detected, we believe it would be inappropriate to allow a special enrollment period where a consumer enrolls in a plan an appreciable amount of time after the error has been corrected.

While we understand that errors to provider networks and drug formularies are a serious concern, especially to those with specialized health care needs, we also note that in these cases, other consumer protections might apply. For instance, if a drug is no longer on the plan's formulary, the plan is still required to have processes in place that allow the enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber, as appropriate) to request and gain access to clinically appropriate drugs not otherwise covered by a health plan (a request for exception) in accordance with § 156.122(c). For this reason, these cases do not qualify a consumer for this special enrollment period. We are continuing to work with issuers and States to improve the accuracy and timeliness of provider and drug information made available to consumers.

In addition, we clarify that this special enrollment period only applies to material plan or benefit display errors through the Exchange, and does not include plan or benefit display errors outside of the Exchange. This special enrollment period is intended for consumers who made the decision to purchase health coverage through the Exchange and their decision about which QHP to enroll into was impacted by this material plan or benefit display error. Through existing data correction processes, the Exchange will typically be made aware of these errors and any corrections that were made. For other plan errors that may exist outside of the Exchange, we note that a special enrollment period in paragraph (d)(5) already exists and applies marketwide for situations where a plan has substantially violated a material provision of its contract in relation to the enrollee.

Comment: Commenters requested clarification about the special enrollment period for data matching issues that are cleared post expiration of an inconsistency period at § 155.420(d)(13), including whether there is a limit on the time since the initial application for a consumer to qualify for this special enrollment period, or whether this special enrollment period can be restricted to only allow consumers to enroll in the QHP in which they were previously enrolled.

Response: In order to qualify for the special enrollment period for a data matching issue that has been cleared post expiration of an inconsistency period, documentation must be submitted that proves that the consumer was a qualified individual at the time that the data matching issue was triggered during the same coverage year. The qualified individual may then enroll in the same or a different QHP back to the date that he or she was previously expired from coverage, at his or her option, in order to eliminate a gap in coverage.

[53] Updated Guidance on Victims of Domestic Abuse and Spousal Abandonment. Jun. 27, 2015. Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Updated-Guidance-on-Victims-of-Domestic-Abuse-and-Spousal-Abandonment_7.pdf.*

Additionally, those who have an annual household income under 100 percent of the Federal poverty level and did not enroll in coverage while waiting for HHS to verify through the data matching process that they meet the citizenship, national, or immigration status described in section 1401(c)(1)(A)(ii) of the Affordable Care Act may also qualify for the special enrollment period in paragraph (d)(13) after verifying that they meet this criteria. These individuals may receive a coverage effective date and any applicable Exchange financial assistance retroactive to the coverage effective date associated with the application that triggered this data matching issue. For these consumers who have an annual household income under 100 percent of the Federal poverty level and did not enroll while waiting for HHS to verify their eligibility through the data matching process, they will receive the option for a retroactive coverage effective based on the date that they completed their application using the coverage effective date rules outlined in paragraph (b)(1) of this section.

Comment: Several commenters requested that new special enrollment periods be added, including a special enrollment period for pregnancy or a special enrollment period for qualified individuals who are automatically re-enrolled into a QHP that does not meet their health coverage needs.

Response: We thank commenters for making their suggestions about special enrollment periods. However, these issues are outside of the scope of this specific rulemaking.

Comment: Many commenters provided input and suggestions about the impact an eligibility verification would have on the Exchange market, and about changes they believe could help strengthen risk pools and reduce possible misuse of special enrollment periods. Commenters also shared thoughts about methods and criteria for monitoring and evaluating QHP enrollments through special enrollment periods.

Some commenters expressed concerns about limiting access to special enrollment periods prior to receiving adequate information about misuse and abuse, while other commenters supported expansive verification efforts where HHS verifies all QHP enrollments through special enrollment periods. In cases where HHS does verify special enrollment period enrollments, commenters requested that we conduct robust training for all individuals and entities involved in assisting consumers with enrolling in QHPs, automate the verification process to the extent possible, and monitor and collect data across a variety of enrollee characteristics and behaviors in order to better understand the populations and identify possible trends. One commenter also requested that States operating SBEs maintain flexibility to verify eligibility for enrollments in the manner that makes the most sense for their State.

Many commenters asked about the FFE's pre-enrollment verification pilot and its parameters.

Commenters also suggested that improved data collection could also be used to curb possible misuse of special enrollment periods, in addition to expanding the Exchanges' use of electronic data sources, and improving education efforts to make sure all stakeholders understand the eligibility criteria for all special enrollment periods.

To improve the risk pool, commenters submitted a variety of ideas, including enhanced and more targeted outreach efforts, improving coordination with other entities in order to gain and retain QHP enrollments, increasing enrollment assistance for consumers who have qualified for special enrollment periods, and amending grace period rules to further incentivize qualified individuals to maintain continuous coverage.

Response: We appreciate the ideas and recommendations shared by commenters about anticipated impacts of an eligibility verification for special enrollment periods and how HHS may reduce possible misuse and abuse of special enrollment periods, while continuing to strengthen risk pools. We also appreciate the suggestions about the methods we should use to monitor special enrollment period enrollments and criteria we should evaluate in order to better understand consumer behavior and increase appropriate utilization of special enrollment periods.

We recognize the importance of providing clarity about how an Exchange may verify a consumer's eligibility for a special enrollment period, as well as about how the FFE plans to verify special enrollment period eligibility through its pre-enrollment pilot. Therefore, we have recently issued guidance describing how we will conduct our Pre-Enrollment Verification Pilot.

Comment: In addition to comments about the impact an eligibility verification would have on the Exchange market, some commenters expressed specific concerns about the potential consumer impacts of verification efforts, especially if an Exchange were to verify eligibility through a manual process prior to enrollment. Commenters stated that making it more difficult for consumers to enroll in coverage would discourage consumers, particularly young and minority consumers, from completing their enrollments. Commenters were also concerned that delaying access to coverage for a period of time while a consumer's eligibility is being verified could harm the consumer's health if the consumer is thereby unable to access needed medical care or prescriptions during that time. One commenter warned that delaying enrollment could lead to unintended pregnancy, if consumers have a gap in access to contraceptive coverage. Further, stakeholders have expressed concern about the financial hardship or disincentives to enrollment that could result if a consumer's enrollment is delayed until after verification, but they are then are ultimately required to pay months of retroactive premium because coverage effective dates are generally set based on the date a consumer selects a plan.

Response: We appreciate commenters' concerns and are committed to making a verification for eligibility to enroll in QHP coverage through a special enrollment period as consumer-friendly as possible. We are particularly cognizant of the potential effects of delays in the effective date of coverage, including gaps in coverage that result from a prolonged verification process, and the potential financial hardships or disincentives to enrollment that could result if a consumer's enrollment is delayed until after verification, but they are ultimately required to pay months of retroactive premium. In response to these concerns, we are adding paragraph (b)(5) to provide an Exchange with the flexibility to provide a consumer with a later coverage effective date, at the consumer's option, if his or her ability to enroll in coverage is delayed so that he or she would owe two or more months of premiums retroactively if his or her coverage effective date were set based on their plan selection date under existing coverage effective date rules. Doing so will avoid penalizing the consumer for delays in the process, while avoiding selection effects on the risk pool.

In addition, to help ensure program integrity and consumer protections, we note that § 155.220(j)(2)(i) requires agents and brokers to provide consumers with correct information without omission of material fact, and § 155.220(j)(2)(ii) requires them to provide the FFEs with correct information under section 1411(b) of the Affordable Care Act; § 155.210(e)(2) requires Navigators (and certain non-

Navigator assistance personnel by cross-reference at § 155.215(a)(2)(i)) to provide information and services in a fair, accurate, and impartial manner; § 155.225(d)(4) requires certified application counselors to act in the best interest of the applicants assisted, and § 155.225(c)(1) requires them to provide fair, impartial, and accurate information. These duties help protect consumers and also help to safeguard against potential gaming, misinformation, and confusion when consumers are applying for and enrolling in coverage through an Exchange. Encouraging, convincing, or knowingly assisting a consumer to abuse the special enrollment process by facilitating enrollment based on false attestations, false documents, or other false information, would be a violation of these standards. Persons or entities determined to have violated these requirements may be subject to applicable penalties designed to ensure the integrity of persons and entities that assist consumers with enrollment through an Exchange. For example, consumer assistance entities in FFEs (as defined at § 155.206(b)) that violate the standards described above are subject to civil money penalties described in § 155.206; and any person who provides false or fraudulent information to an Exchange is subject to civil money penalties described in § 155.285. Agents and brokers in FFEs are subject to suspension or termination of their agreements with HHS under § 155.220(g). Organizations that are designated by an Exchange to certify their staff and volunteers as certified application counselors risk withdrawal of their designations, and individual certified application counselors risk termination of their certifications, under § 155.225(e). Navigators are subject to remedies available pursuant to the terms and conditions of Navigator grant awards, and non-Navigator in person-assistance entities and their personnel who provide enrollment assistance pursuant to contracts or agreements with Exchanges may be subject to any remedies available under the entity's contract or agreement with the Exchange.

(3) Termination of Exchange Enrollment or Coverage (§ 155.430)

We proposed to amend § 155.430(b)(2)(iii) to specify that when an issuer seeks to rescind coverage, in accordance with § 147.128, in a QHP purchased through an Exchange, the issuer must first demonstrate, to the reasonable satisfaction of the Exchange, that the rescission is appropriate, if so required by the Exchange. In FFEs and SBE–FPs, HHS anticipates generally requiring such a demonstration. Section 2712 of the PHS Act and § 147.128 prohibit an issuer from rescinding coverage unless the individual (or a person seeking coverage on behalf of the individual) performs an act, practice, or omission that constitutes fraud, or makes an intentional misrepresentation of material fact, as prohibited by the terms of the plan or coverage. We do not seek to restrict issuers' ability to rescind coverage when an individual or a party seeking coverage on behalf of an individual fraudulently enrolls the individual in coverage. However, because the Exchanges generally must be involved in all enrollment processes, including the process of rescinding coverage for plans purchased through the Exchange, it is necessary for the issuer to provide information to the Exchange in order to implement the rescission. Additionally, it is important for consumer protection and the orderly functioning of Exchanges that individuals whose eligibility has been verified and enrollments processed according to Exchange rules can be sure that their coverage will not be rescinded by issuers without a showing that the enrollment was fraudulent or due to an intentional misrepresentation of material fact as prohibited by the terms of the plan or coverage, meeting the requirements for rescission under § 147.128. The FFEs or SBE–FPs would not hinder an issuer seeking to rescind on grounds demonstrating fraud or intentional misrepresentation of material fact, such as the enrollment of a non-existent or deceased person.

We are finalizing this provision as proposed.

Comment: The majority of commenters were in favor of the proposed amendment and supported additional Exchange oversight of the rescission process. These commenters saw the proposed rule as providing an important consumer protection that does not unduly burden issuers. However, one commenter stated that the proposal would add another step to a rescission investigation, causing a delay in the process. Other commenters stated that issuers are in the best position to determine which coverage should be rescinded and that enrollees with rescinded coverage have a sufficient remedy in their right to an appeal. A few commenters expressed conditional support for the proposal, but expressed hope that the requirements for permissible rescissions would be well defined and that the Exchange oversight process could be structured to cause minimal delay.

Response: We believe that because the decision to rescind coverage has such serious consequences for enrollees, it is important for consumer protection and the orderly functioning of Exchanges that Exchange oversight be provided to ensure that individuals who have been determined eligible under Exchange eligibility rules do not have their coverage rescinded unless that enrollment is shown to be fraudulent or due to an intentional misrepresentation of material fact, as prohibited by the terms of the plan or coverage, meeting the requirements for rescission under § 147.128. We do not believe that additional oversight will harm consumers or issuers by adding a step to the rescission process, or that appeals conducted after a wrongful rescission are as protective of consumers as prevention of wrongful rescissions. We intend to provide further guidance on the process for issuers to demonstrate the appropriateness of rescissions to the FFEs and SBE–FPs.

e. Appeals of Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

(1) General Eligibility Appeals Requirements (§ 155.505)

In § 155.505, we proposed to add paragraph (h) permitting the Exchange appeals entity to utilize a secure and expedient paper-based appeals processes for the acceptance of appeal requests, the provision of appeals notices, and the secure transmission of appeals-related information between entities, when the Exchange appeals entity is unable to establish and perform otherwise required related electronic functions. We proposed this flexibility to accommodate some Exchange appeals entities that are continuing to work towards full compliance with regulatory requirements related to electronic appeals processes. These required electronic functions include: accepting appeal requests submitted by telephone or internet (§ 155.520(a)(1)(i) and (iv)), sending electronic notices (§ 155.230(d)), and establishing secure electronic interfaces to transfer eligibility and appeal records between appeals entities and Exchanges or Medicaid or CHIP agencies (§ 155.345(i)(1); § 155.510(b)(1)(ii) and (b)(2); § 155.520(d)(1)(ii) and (iii) and (d)(3) and (4); § 155.545(b)(3); § 155.555(e)(1); and § 155.740(h)(1)). We proposed this flexibility for individual market eligibility appeals, employer appeals, and SHOP employer and employee appeals as described in part 155, subparts C, D, F, and H.

We are finalizing these provisions as proposed.

Comment: We received comments in support of and against our proposal to permit the Exchange appeals entity to utilize a secure and expedient paper-based appeals processes for certain functions (the acceptance for appeals requests, the provision of appeals notices, and the secure transmission of appeals-related information between entities), when the Exchange appeals entity is unable to establish and perform such functions electronically. Most commenters noted the importance of a timely, streamlined appeals process, whether electronic or paper-based. Those against the proposal expressed concern that a paper-based process would contribute to delays in appeals processing. A few commenters recommended that we provide a deadline by which the Exchange appeals entity must fully comply with electronic appeals requirements. Some commenters recommended that the Exchange appeals entity accept appeals requests by email, perhaps using a fillable PDF, even if it is not able to comply with the electronic appeals requirements described in part 155, subparts C, D, F, and H. Commenters also recommended that a future electronic system have the ability to track appeals so that consumers and assisters can get status updates on appeals that are in progress.

Response: We agree with commenters about the importance of a streamlined and expedient appeals process. We also believe that appeals entities should continue to work towards modernizing and updating their appeals processes, to the extent they are able in view of competing system development priorities, in an effort to further achieve those goals. Nevertheless, we decline to finalize this rule with a deadline by which the Exchange appeals entity must fully comply with electronic appeals requirements because different appeals entities may have different operational constraints. We note that paper-based processes under this rule must be expedient, secure, and provide appropriate procedural protections for appellants. We also note that the format of appeals documents provided by an Exchange appeals entity must continue to meet the requirements of effective communications under the Americans with Disabilities Act of 1990, section 504 of the Rehabilitation Act, and section 1557 of the Affordable Care Act.

We will explore the possibility of accepting appeal requests via email, provided that any email system complies with the privacy and security requirements in § 155.260, especially those pertaining to safeguards of PII described in paragraphs (a)(3)(vii) and (a)(4). We will take other operational suggestions under advisement when designing an electronic system for the HHS appeals entity in the future.

(2) Employer Appeals Process (§ 155.555)

Section 155.555(b) sets forth the requirements for employer appeals processes established either by an Exchange or HHS. We proposed to amend § 155.555(b) to include cross-references to proposed § 155.505(h), described above, which would permit an employer appeals process to utilize paper-based appeals processes for the acceptance of appeal requests, the provision of appeals notices, and the secure transmission of appeals-related information between entities, when the Exchange appeals entity is unable to establish and perform otherwise required related electronic functions. We are finalizing these provisions as proposed.

Comment: The comments we received for the proposed amendment to § 155.555(b) were substantially similar to those we received for the proposed amendment to § 155.505(h) described above.

Response: For the reasons described in the discussion of § 155.505(h), we are finalizing § 155.555(b) as proposed.

Comment: We also received a comment more generally about the employer appeals process and employer notices required under § 155.310(h). The commenter expressed concern that the employer appeals process ''does not resolve anything'' because the IRS independently determines whether an employer is liable for a payment assessed under section 4980H of the Code and whether an individual is entitled to receive the premium tax credit under section 36B of the Code. The commenter also expressed concerns with the accuracy of the notices, including a concern that employers receive notices about former employees because the Exchange does not verify the employment information an employee provides on his or her application for coverage through the Exchange. The commenter noted that the notices to employers lack information that would enable an employer to submit an informed appeal request and supporting documents, such as the months for which an employee was determined eligible for Exchange financial assistance and was enrolled in a QHP through the Exchange. The commenter recommended that the Exchanges suspend the employer notice and appeals process altogether.

Response: This comment is outside the scope of the proposed rule. However, we note that the employer notices and appeals processes are required under sections 1411(e)(4)(B)(iii) and (f)(2), respectively, of the Affordable Care Act. In the proposed 2017 Payment Notice, we stated that an employer notice described in § 155.310(h) serves two purposes: it notifies an employer that it may be liable for the payment assessed under section 4980H of the Code,[54] and it may lead to a reduction in an employee's tax liability because a successful employer appeal could lead to a discontinuation of financial assistance for which the employee is not eligible. Through our experience with employer notices that we sent for 2016, we have learned that the second purpose of the employer notice and appeals process—reducing an employee's potential tax liability—can be better achieved by verifying eligibility before enrollment in a QHP through the Exchange. We believe the Exchange can limit confusion among employers and maximize efficiency by focusing employer notices on the goal of notifying employers that they may be liable for a payment assessed under section 4980H of the Code, as required by section 1411(e)(4)(B)(iii) of the Affordable Care Act.

We recognize that concepts relating to section 4980H of the Code are complex and that the IRS ultimately determines whether the conditions outlined in those provisions have been met. However, we also believe that Exchanges may be able to appropriately streamline the employer notice and appeals processes and reduce confusion among employers, and we will consider such modifications in the future.

To ensure that employees continue to be protected from a potential tax liability, the FFEs continue to look for ways to improve their process of verifying enrollment in and eligibility for qualifying coverage in an eligible

[54] Only certain employers (called applicable large employers) are subject to the employer shared responsibility provisions under section 4980H of the Code. In general, applicable large employers must either offer minimum essential coverage that is ''affordable'' and that provides ''minimum value'' to their full-time employees (and their dependents), or make an employer shared responsibility payment to the IRS if at least one full-time employee receives the premium tax credit under section 36B of the Code. For more information on which employers are subject to the employer shared responsibility provisions and under what circumstances an applicable large employer will be subject to a payment (and how the payments are calculated), see Shared Responsibility for Employers Regarding Health Coverage; Final Rule, 79 FR 8544 (Feb. 12, 2014).). Liability for the employer shared responsibility payment is determined independently by the IRS. More information on the IRS process can be found at *www.irs.gov*.

employer sponsored plan through the use of electronic data sources and other means. We also strongly encourage employers and employer groups to be active participants in this verification effort. For example, at minimal cost, employers can complete a Marketplace Employer Coverage Tool available at *http://www.HealthCare.gov/downloads/employer-coverage-tool.pdf* and provide it to their employees. If an employee applies for coverage through the Exchange, the employee will have information about his or her enrollment in and eligibility for qualifying coverage in an eligible employer sponsored plan so that the Exchange can make a correct determination about the employee's eligibility for Exchange financial assistance.

Finally, we understand that some employers, especially large employers, may benefit from additional information on the employer notice to identify the employee listed on the notice in order to make an accurate appeal. However, we must also be cautious to protect the personally identifiable information of the employee, as discussed in more detail in the Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers final rule and interim final rule, 77 FR 18309, 18356–18357 (Mar. 27, 2012). The FFEs will consider providing additional information, such as the date the employee was determined eligible to begin receiving financial assistance through the Exchange, on employer notices in the future.

f. Required Contribution Percentage (§ 155.605(e)(3))

Under section 5000A of the Code, an individual must have minimum essential coverage for each month, qualify for an exemption, or make a shared responsibility payment with his or her Federal income tax return. Under section 5000A(e)(1) of the Code, an individual is exempt if the amount that he or she would be required to pay for minimum essential coverage (the required contribution) exceeds a particular percentage (the required contribution percentage) of his or her actual household income for a taxable year. In addition, under § 155.605(d)(2), an individual is exempt if his or her required contribution exceeds the required contribution percentage of his or her projected household income for a year. Finally, under § 155.605(d)(2)(iv), certain employed individuals are exempt if, on an individual basis, the cost of self-only coverage is less than the required contribution percentage, but the aggregate cost of individual coverage through employers exceeds the required contribution percentage, and no family coverage is available through an employer at a cost less than the required contribution percentage.

Section 5000A of the Code established the 2014 required contribution percentage at 8 percent. For plan years after 2014, section 5000A(e)(1)(D) of the Code and 26 CFR 1.5000A–3(e)(2)(ii) provide that the required contribution percentage is the percentage determined by the Secretary that reflects the excess of the rate of premium growth between the preceding calendar year and 2013, over the rate of income growth for that period. We established a methodology for determining the excess of the rate of premium growth over the rate of income growth for plan years after 2014 in the 2015 Market Standards Rule (79 FR 30302), and we stated future adjustments would be published annually in the HHS notice of benefit and payment parameters.

Under the HHS methodology, the rate of premium growth over the rate of income growth for a particular calendar year is the quotient of (x) 1 plus the rate of premium growth between the preceding calendar year and 2013, carried out to ten significant digits, divided by (y) 1 plus the rate of income growth between the preceding calendar year and 2013, carried out to ten significant digits.[55]

As the measure of premium growth for a calendar year, we established in the 2015 Market Standards Rule that we would use the premium adjustment percentage. The premium adjustment percentage is based on projections of average per enrollee employer-sponsored insurance premiums from the National Health Expenditure Accounts (NHEA), which are calculated by the CMS Office of the Actuary.[56] (Below, in § 156.130, we finalize the 2018 premium adjustment percentage of 16.17303196 (or an increase of about 16.2 percent) over the period from 2013 to 2017. This reflects an increase of about 2.6 percent over the 2017 premium adjustment percentage (1.1617303196/1.1325256291).)

As the measure of income growth for a calendar year, we established in the 2017 Payment Notice that we would use per capita personal income (PI). Under the approach finalized in the 2017 Payment Notice, and using the NHEA data, the rate of income growth for 2018 is the percentage (if any) by which the most recent projection of per capita PI for the preceding calendar year ($51,388 for 2017) exceeds per capita PI for 2013 ($44,528), carried out to ten significant digits. The ratio of per capita PI for 2017 over the per capita PI for 2013 is estimated to be 1.1540603665 (that is, per capita income growth of about 15.4 percent). This reflects an increase of about 4.0 percent relative to the increase for 2013 to 2016 (1.1540603665/1.1101836394).

Thus, using the 2018 premium adjustment percentage finalized in this rule, the excess of the rate of premium growth over the rate of income growth for 2013 to 2017 is 1.1617303196/1.1540603665, or 1.0066460588. This results in a required contribution percentage for 2018 of 8.00*1.0066460588, or 8.05 percent, when rounded to the nearest one-hundredth of one percent, a decrease of 0.11 percentage points from 2017 (8.05317 from 8.16100). The excess of the rate of premium growth over the rate of income growth also is used for determining the applicable percentage in section 36B(b)(3)(A) of the Code and the required contribution percentage in section 36B(c)(2)(C) of the Code. We received no comments on this proposal, as such, we are finalizing as proposed. We may update the premium adjustment percentage and the required contribution percentage (for years beyond 2018) in guidance, calculating those parameters using the methodologies established through rulemaking. We are updating the regulatory text to permit this update.

g. Enrollment Periods Under SHOP (§ 155.725)

Section 155.725(g) describes the process for newly qualified employees to enroll in coverage through a SHOP and the coverage effective date for newly qualified employees. We proposed to amend paragraphs (g)(1) and (2) and add new paragraph (g)(3).

Currently, § 155.725(g)(1) requires both that: (1) The enrollment period for an employee who becomes a qualified employee outside of the initial or annual open enrollment period starts on the first day of becoming a newly qualified employee; and (2) a newly qualified employee must have at least 30 days from the beginning of his or her enrollment period to make a plan

[55] We also defined the required contribution percentage at § 155.600(a) to mean the product of 8 percent and the rate of premium growth over the rate of income growth for the calendar year, rounded to the nearest one-hundredth of one percent.

[56] For any given year the premium adjustment percentage is the percentage (if any) by which the most recent NHEA projection of per enrollee employer-sponsored insurance premiums for the current year exceeds the most recent NHEA projection of per enrollee employer-sponsored insurance premiums for 2013.

selection. The latter requirement is intended to guarantee that the employee has sufficient time to make an informed decision about his or her health coverage needs. We did not propose changes to this latter requirement, but we proposed to change the day the enrollment period begins.

Before a newly qualified employee may make a plan selection through a SHOP, his or her employer must notify the SHOP about the newly qualified employee. Qualified employers in an FF–SHOP or SBE–FP using the Federal platform for SHOP eligibility or enrollment functions generally report newly qualified employees by adding the employee to the employee roster or by calling the FF–SHOP call center. If, however, a qualified employer waits to take either action, a newly qualified employee might not be able to begin the enrollment process until after the date upon which the employee became eligible, and might not have a full 30 days to make a coverage decision. We noted that we were concerned there might be a similar delay in State-based SHOPs.

To ensure that newly qualified employees have the full 30 days to enroll, we proposed, at § 155.725(g)(1), that SHOPs would be required to provide an employee who becomes a qualified employee outside of the initial or annual open enrollment period with a 30-day enrollment period beginning on the date that the qualified employer notifies the SHOP about the newly qualified employee. We also proposed that qualified employers would be required to notify the SHOP about a newly qualified employee on or before the 30th day after the day that the employee becomes eligible for coverage. We also proposed a conforming amendment to the requirements for qualified employers at § 157.205(f)(1). Together with the other proposed amendments to paragraph (g) discussed below, this proposal was intended to ensure that a 30-day enrollment period starting on the date of the qualified employer's notice to the SHOP would not delay the effective date of coverage beyond the limits on waiting periods imposed under § 147.116. This proposal would also ensure that newly qualified employees are provided with a full 30 days to make their health coverage decisions.

We also proposed to remove the requirement in current § 155.725(g)(1) that enrollment periods for newly qualified employees must end no sooner than 15 days prior to the date that any applicable employee waiting period longer than 45 days would end if the employee made a plan selection on the first day of becoming eligible. We proposed to remove this requirement because we expected the proposed amendments at paragraphs (g)(2) and (3) discussed below would minimize the risk of employers exceeding waiting period limitations, as defined at § 147.116, and because we believe that removing this requirement would in some circumstances give newly qualified employees a longer period of time to make coverage decisions.

Current paragraph (g)(2) provides that a newly qualified employee's coverage effective date must always be the first day of a month and must generally be determined in accordance with paragraph (h), unless the employee is subject to a waiting period consistent with § 147.116, in which case the effective date may be on the first day of a later month, but in no case may the effective date fail to comply with § 147.116. Thus, in an FF–SHOP, under the current rule, coverage for a newly qualified employee generally takes effect the first day of the following month for a plan selection made on or before the 15th day of a month and takes effect the first day of the second following month for a plan selection made after the 15th day of a month, unless coverage must take effect on a later date due to the application of a waiting period consistent with § 147.116. We proposed to modify paragraph (g)(2) to specify that the coverage effective date for a newly qualified employee would be the first day of the month following the plan selection, (rather than being determined in accordance with paragraph (h)), unless the employee is subject to a waiting period consistent with § 147.116 and proposed paragraph (g)(3). Under the proposal, if an employee is subject to a waiting period, the effective date would be on the first day of the month following the end of the waiting period, but in no case may the effective date fail to comply with § 147.116. The proposed amendments to paragraph (g)(2) also specified that: (1) If a newly qualified employee's waiting period ends on the first day of a month and the employee has already made a plan selection by that date, coverage would also be effective on that date; and (2) if a newly qualified employee makes a plan selection on the first day of a month and any applicable waiting period has ended by that date, coverage would be effective on that date. These amendments were intended to minimize the risk of an employer exceeding the limitations on waiting period length at § 147.116 due to SHOP enrollment timelines and processes.

Additionally, in order to ensure that SHOP operations consistent with these proposed amendments would not cause a qualified employer to exceed the limits on waiting periods under § 147.116, we proposed to amend § 155.725(g)(2) to require that if a qualified employer with variable hour employees makes regularly having a specified number of hours of service per period (or working full-time) a condition of employee eligibility for coverage offered through a SHOP, any measurement period that the qualified employer uses to determine eligibility under § 147.116(c)(3)(i) must not exceed 10 months with respect to coverage offered through the SHOP (rather than the 12-month measurement period otherwise allowed under § 147.116(c)(3)(i)). This aspect of the proposal was intended to ensure that coverage takes effect within the limitations on waiting period length at § 147.116(c)(3)(i) for variable hour employees, under which coverage must take effect no later than 13 months from the employee's start date, plus, if the employee's start date is not the first day of a calendar month, the time remaining until the first day of the next calendar month. Specifically, for qualified employers that condition eligibility for coverage on an employee regularly having a specified number of hours of service per period (or working full-time), if it cannot be determined that a newly-hired employee is reasonably expected to regularly work that number of hours per period (or work full-time), the qualified employer may take a reasonable period of time, not to exceed 10 months and beginning on any date between the employee's start date and the first day of the first calendar month following the employee's start date, to determine whether the employee meets the eligibility condition.

We sought comment on whether any of the proposed timeframes might result in a situation in which an employer or issuer falls out of compliance with § 147.116.

Consistent with § 147.116, as long as the employee subject to a waiting period may make a plan selection that results in coverage becoming effective within the timeframes required under § 147.116, coverage that begins later as a result of the employee's delay in making a plan selection would not constitute a failure to comply with the waiting period limitations under § 147.116. As a result of our proposal at paragraph (g)(2) of this section, when a newly qualified employee subject to a waiting period makes a plan selection, coverage would begin the first day of the first month that follows the expiration

of the waiting period, as long as that date is consistent with the requirements in § 147.116. However, if the first day of the first month following the expiration of the waiting period for this employee would be outside the limits under § 147.116, the SHOP would be required under paragraph (g)(2) to ensure that coverage takes effect within the required timeframe. To avoid this scenario and the operational complications it would cause for SHOPs, we proposed to specify in a new paragraph (g)(3) that waiting periods in a SHOP may not exceed 60 days in length. If an individual subject to a waiting period could have had an effective date within the timeframes in § 147.116 by making a plan selection at the beginning of the enrollment period, but delays making a plan selection, consistent with § 147.116(a), coverage would begin the first day of the first month following the end of the waiting period, even if this would not be within the timeframes in § 147.116.

In addition to specifying that waiting periods in SHOPs would not exceed 60 days, we also proposed at paragraph (g)(3) to specify the calculation methodology for waiting periods in SHOPs. Under the proposed amendment, waiting periods in SHOPs would be calculated beginning on the date the employee becomes eligible—regardless of when the qualified employer notifies the SHOP about the newly qualified employee. For example, a 60-day waiting period would be calculated as the date an employee becomes otherwise eligible plus 59 days. Under this methodology, the date the employee becomes otherwise eligible counts as the first day of the waiting period. We proposed this amendment to ensure that employers would remain in compliance with § 147.116 when factoring in certain aspects of the SHOP enrollment timeline, such as the 30 days employers would have under the proposed amendments to notify the SHOP about a newly qualified employee, the 30 days newly qualified employees have to make a plan selection, and the coverage effective dates that would apply under the proposed amendments to § 155.725(g). To minimize operational complexity in the Federal platform for the SHOP, we also proposed amendments to paragraph (g)(3) to specify that a Federally-facilitated SHOP or a State-based SHOP that uses the Federal platform for SHOP eligibility or enrollment functions would only allow waiting periods of 0, 15, 30, 45, and 60 days.

Our proposed amendments would not change the rule that in no case may the effective date for a newly qualified employee fail to comply with § 147.116 and our proposals would only apply for purposes of SHOPs, and would not change § 147.116.

We also proposed to amend paragraph (j)(2)(i) to reflect the proposed codification of existing special enrollment periods discussed in the preamble to § 155.420, specifically those proposed to be codified at § 155.420(d)(10), (11), and (12).

We are finalizing these policies with modifications that will generally maintain the status quo with respect to enrollment periods and coverage effective dates for newly qualified employees in State-based Exchanges that are not using the Federal platform for SHOP functions. These modifications generally preserve the current version of § 155.725(g) in State-based Exchanges that are not using the Federal platform for SHOP functions, and make most of the proposed amendments to § 155.725(g) applicable only in FF–SHOPs and in SBE–FPs using the Federal platform for SHOP functions. The only proposed amendment that we are finalizing to apply in all SHOPs (both State-based and Federally-facilitated) is the amendment we proposed at (g)(3) specifying when waiting periods in SHOPs begin. Additionally, we are modifying the proposed amendments to specify that, in an FF–SHOP or in an SBE–FP using the Federal platform for SHOP functions, if a newly qualified employee makes a plan selection on the first day of a month and any applicable waiting period has ended by that date, coverage must be effective on the first day of the following month (rather than, as was proposed, on the date of the plan selection). We are also making some modifications to the text of the proposed regulation to indicate that employees are considered to have received a qualified employer's offer of coverage, and thus, to have become qualified employees, as soon as they become otherwise eligible for coverage under the terms of the group health plan, before any applicable waiting period has elapsed.

Comment: One commenter agreed with all of the proposed changes. This commenter stated that without the proposed changes, incompatible deadlines would make it difficult for employers to meet enrollment timeframes and waiting period rules. We also received several comments stating that the proposed requirements are too prescriptive. These commenters believe that State-based SHOPs should have flexibility to establish their own policies for employees enrolling in coverage for the first time outside of the group's initial or annual enrollment period. The commenters further believed that the proposed requirements should be optional for State-based SHOPs.

Response: We recognize that under HHS's SHOP regulations, State-based SHOPs have generally enjoyed significant flexibility to establish their own enrollment operations and timeframes. In order to ensure that State-based Exchanges that are not using the Federal platform for SHOP functions continue to have flexibility to establish enrollment timeframes for newly qualified employees based on State rules, definitions, and operational functions, we have decided to make most of the proposed amendments to § 155.725(g) applicable only in FF–SHOPs and SBE–FPs using the Federal platform for SHOP functions in this final rule, and generally to preserve the current version of § 155.725(g) for State-based SHOPs that are not using the Federal platform. The only proposed amendment that will apply in all SHOPs, including State-based SHOPs that are not using the Federal platform, is the amendment proposed at § 155.725(g)(3) (finalized at § 155.725(g)(1)(iii) and (g)(2)(iii)) regarding when waiting periods in a SHOP begin. We would continue to expect that, as is the case under the current rule, all SHOPs would establish enrollment timeframes and coverage effective dates for newly qualified employees that enable qualified employers administering group health plans to remain compliant with § 147.116.

Comment: We received some comments in support of the proposal to begin the enrollment period for a newly qualified employee on the day that the qualified employer notifies the SHOP about the newly qualified employee. We also received some comments that did not support this proposal. One commenter believed that the proposal is not necessary because there are sufficient requirements under ERISA that govern employer-imposed waiting periods. This commenter also believed that qualified employees are not offered coverage, and therefore are not ''qualified employees,'' until after they have already successfully completed any applicable waiting period, and that our proposal requiring employers to notify the SHOP about a newly qualified employee on or before the 30th day after the employee becomes eligible thus permits a qualified employer to notify the SHOP up to 30 days after any applicable waiting period has ended. Further, this commenter believed that

requiring employers to notify the SHOP about a newly qualified employee is administratively unnecessary because the employee may decline coverage and there is nothing for the SHOP to do if the employee declines coverage. Another commenter expressed concern that an employer could wait weeks or months before notifying the SHOP regarding a new employee. One commenter also believed that because there is little to no indication that the current enrollment period is not sufficient for making an informed decision, the current rules should be maintained.

Response: We do not agree with the commenter's premise that an individual does not become a qualified employee until after any applicable waiting period has elapsed. Under § 155.20, a qualified employee is defined as any employee or former employee of a qualified employer who has been offered health insurance coverage by such qualified employer through the SHOP. For SHOP purposes, once an employee is offered coverage through the SHOP by a qualified employer, the employee is considered to be a qualified employee even if, consistent with § 147.116(b), a waiting period must pass before coverage for the individual can become effective. Thus, for SHOP purposes, a qualified employee is considered to be ''otherwise eligible'' within the meaning of § 147.116(c). Moreover, under § 155.710(b)(2), a qualified employer must offer coverage in a QHP through the SHOP to all full-time employees. If an employer is not considered to have offered coverage (for SHOP purposes) to all current full-time employees until all applicable waiting periods had elapsed, this could delay the employer's eligibility determination and thus delay the initial group enrollment. We are modifying the rule text in this final rule to make our position clearer.

HHS also does not believe that it is administratively unnecessary for a qualified employer to notify a SHOP about a newly qualified employee, even if that employee ultimately declines the offer of coverage. This notification is necessary in order for the SHOP to provide newly qualified employees with an enrollment period, particularly in circumstances where employee choice is offered and where employees choose a plan online. Moreover, qualified employers in all SHOPs are already required to notify the SHOP of newly qualified employees under existing rules at § 157.205(f)(1), and that general requirement will not be modified in this final rule, although § 157.205(f)(1) will be modified in this final rule to establish a deadline for this notification in FF–SHOPs and in SBE–FPs using the Federal platform for SHOP functions.

Qualified employers administering group health plans are ultimately responsible for ensuring that they remain compliant with § 147.116. However, our proposals were intended to make it easier for such employers to comply with § 147.116, while also providing for more uniform enrollment timeframes and rules that permit SHOPs, particularly FF–SHOPs and SBE–FPs using the Federal platform for SHOP functions, to operate more efficiently.

In order to prevent circumstances where employers potentially wait weeks or months before notifying a SHOP regarding a newly qualified employee, HHS is finalizing our proposal to require qualified employers to notify the SHOP about a newly qualified employee on or before the 30th day after the day that the employee becomes eligible for coverage, but (as discussed above) with modifications to limit this requirement to FF–SHOPs and to SBE–FPs using the Federal platform for SHOP functions, and to make it clear that this notification should occur when the employee becomes a newly qualified employee, that is, when the employee becomes otherwise eligible for coverage. HHS is also making a conforming change to the proposed requirements for qualified employers at § 157.205(f)(1). We are also amending § 157.205(e)(1) in this final rule to align that provision with our amendments to § 155.725(g).

Comment: HHS received one comment supporting the proposal to remove the requirement that enrollment periods for newly qualified employees end no sooner than 15 days prior to the date that any applicable waiting period that is longer than 45 days would end.

Response: We are finalizing this amendment as proposed for FF–SHOPs and for SBE–FPs using the Federal platform for SHOP functions, because removal of this requirement in these SHOPs, where our other proposed amendments will apply, may in some circumstances provide newly qualified employees with a longer period of time to make coverage decisions, as discussed in the preamble to the proposed rule.

Comment: We received one comment supporting the proposal to specify that the coverage effective date for a newly qualified employee be the first day of the month following the plan selection (rather than being determined in accordance with paragraph (h)), unless the employee is subject to a waiting period consistent with § 147.116 and proposed paragraph (g)(3), in which case the effective date would be on the first day of the month following the end of the waiting period. We also received some comments that did not support the proposal to remove the cross-reference to the requirements at paragraph § 155.725(h) for newly qualified employees. One commenter believed that QHP issuers would not have sufficient time to process new enrollments and create and distribute welcome packages under the proposal at (g)(2). Other commenters stated they believe the new requirements are too prescriptive for State-based SHOPs and that State-based SHOPs should maintain flexibility to establish effective dates for employees enrolling in coverage for the first time.

Response: We are making most of the amendments proposed at § 155.725(g) applicable only in FF–SHOPs and in SBE–FPs using the Federal platform for SHOP functions (as discussed above), and are also modifying the provision regarding the coverage effective date for newly qualified employees that make a plan selection on the first day of a month, after any applicable waiting period has ended. For FF–SHOPs and SBE–FPs utilizing the Federal platform for SHOP functions, we believe that for operational reasons, removing the cross-reference to the 15th day of the month coverage effective date rule described in paragraph § 155.725(h)(2) will help to ensure that qualified employers administering group health plans are in compliance with the limitations on waiting period length at § 147.116. In order to further minimize the risk that qualified employers administering group health plans would exceed waiting period length limitations at § 147.116, we are finalizing our proposal that if plan selection is made prior to the first day of the month and any applicable waiting period ends on the first day of the month, coverage will be effective on that day, but are limiting the applicability of this provision to FF–SHOPs and to SBE–FPs using the Federal platform for SHOP functions.

We are modifying the proposed requirement to effectuate coverage on the first day of the month when a plan selection happens on the first day of the month and any applicable waiting period has already ended. First, due to operational limitations of the Federal platform, and in consideration of the concerns expressed in some of the comments received, we are modifying the provision so that coverage will take effect in these circumstances on the first day of the following month. Second, like most of the proposed amendments, this provision will apply only in FF–SHOPs and in SBE–FPs using the Federal platform for SHOP functions.

The coverage effective date timelines that will be established in this final rule for FF–SHOPs and SBE–FPs using the Federal platform for SHOP functions are similar to timelines required for certain special enrollment periods, and we believe issuers are equipped to effectuate coverage consistent with the rule, even if it means that some newly qualified employees might not receive their welcome packages until after the coverage effective date.

Comment: We received one comment expressing concern about the proposals on variable-hour measurement periods for SHOP employers. The commenter believed that this new requirement would create a barrier to entry and compliance issues for large employers considering purchasing coverage through a SHOP.

Response: We are finalizing the proposed amendment relating to variable-hour measurement periods, but are making it applicable only in FF–SHOPs and in SBE–FPs using the Federal platform for SHOP functions, in order to help qualified employers—including large employers—administering group health plans in those SHOPs remain in compliance with waiting period rules for variable hour employees as described at § 147.116(c)(3)(i). This requirement helps to ensure that coverage takes effect for variable hour employees no later than 13 months from the employee's start date plus, if the employee's start date is not the first day of a calendar month, the time remaining until the first day of the next calendar month.

Comment: Some commenters did not support our proposals requiring that waiting periods in the SHOP not exceed 60 days and the proposal to specify the calculation methodology for waiting periods in SHOPs. One commenter stated that because SHOPs do not monitor employer waiting periods, the proposal to only allow up to 60 days for a waiting period would unnecessarily require the SHOP to begin monitoring employer benefit plans. Further, commenters stated that certain States have laws that allow employers to impose up to a 90-day waiting period and more restrictive requirements would discourage employer participation and invite compliance errors. Another commenter supported our proposal on waiting periods.

Response: We are finalizing the proposal that waiting periods in SHOPs not exceed 60 days with a modification to make it apply only in FF–SHOPs and in SBE–FPs using the Federal platform for SHOP functions, for the reasons discussed above. We would continue to expect that, as is the case under the current rule, State-based SHOPs that are not using the Federal platform for SHOP functions would establish enrollment timelines and coverage effective dates for newly qualified employees that enable qualified employers administering group health plans to remain compliant with § 147.116.

Due to the operational functionality of the Federal platform, permitting qualified employers in FF–SHOPs and in SBE–FPs utilizing the Federal platform for SHOP functions to opt for a 90-day waiting period creates heightened risk that the waiting period limitations at § 147.116 would be exceeded under the standard systems logic, and thus creates operational complexity for these SHOPs, which under our rule are obligated to ensure a coverage effective date that does not exceed the limitations under § 147.116.

Because the proposal requiring that waiting periods in SHOPs be calculated beginning on the date that the employee becomes eligible for coverage is generally consistent with § 147.116, we are finalizing that proposal to apply in all SHOPs, including State-based SHOPs that are not using the Federal platform. We are modifying that proposal to reflect that the waiting period should begin on the day that the employee becomes a qualified employee who is otherwise eligible for coverage, for the reasons discussed above.

Comment: We did not receive any comments on our proposed amendment to § 155.725(j)(2)(i) to reflect the proposed codification of existing special enrollment periods discussed in the preamble to § 155.420, specifically those proposed to be codified at § 155.420(d)(10), (11), and (12).

Response: We are finalizing this amendment as proposed.

h. SHOP Employer and Employee Eligibility Appeals Requirements (§ 155.740)

We proposed to amend § 155.740(b)(2) to include a cross-reference to proposed § 155.505(h). This amendment would permit SHOP employer and employee eligibility appeals entities to use a secure and expedient paper-based process if the appeals entity cannot fulfill certain electronic requirements. We are finalizing this amendment as proposed.

Comment: We received one comment supporting our proposal to cross-reference proposed § 155.505(h) to permit SHOP employer and employee eligibility appeals entities to use a secure and expedient paper-based process if the appeals entity cannot fulfill certain electronic requirements.

Response: We are finalizing our proposal without modification.

i. Request for Reconsideration (§ 155.1090)

In the proposed rule, HHS proposed a new § 155.1090 to allow an issuer to request reconsideration of denial of certification of a plan as a QHP for sale through an FFE. We proposed that an issuer that has applied to an FFE for certification of QHPs and has been denied certification must submit to HHS a written request for reconsideration within seven calendar days of the date of written notice of denial of certification in the form and manner specified by HHS in order to obtain a reconsideration. We further proposed that the issuer must include any and all documentation in support of its request when it submits a request for reconsideration. We proposed that requests may be submitted and considered only after an issuer has submitted a complete, initial application for certification and been denied. In § 155.1090(a)(3), we proposed that HHS would provide the issuer with a written reconsideration decision, and that decision would constitute HHS's final determination. In the preamble of the proposed rule, we noted this approach would afford issuers an opportunity to furnish any additional facts and information that might not have been considered as part of an FFE's initial decision to deny certification. We also indicated our intent is for the Office of Personnel Management to maintain authority over reconsideration of applications from issuers to offer a multi-State plan. We are finalizing these provisions as proposed.

Comment: All commenters supported the proposal to allow an issuer to request reconsideration of denial of certification. One commenter expressed concern about the short timeline to submit the request for reconsideration, but indicated additional guidance on the process should allow issuers to navigate the process successfully. One commenter requested HHS provide more information about the timeline for this process.

Response: We believe the short timeline for submission of the reconsideration requests is required to allow HHS the opportunity to implement a decision to certify a plan prior to open enrollment. We intend to provide future guidance on the form and manner through which issuers should submit requests for reconsideration.

9. Part 156—Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges

a. General Provisions

(1) FFE User Fee for the 2018 Benefit Year (§ 156.50)

Section 1311(d)(5)(A) of the Affordable Care Act permits an Exchange to charge assessments or user fees on participating health insurance issuers as a means of generating funding to support its operations. In addition, 31 U.S.C. 9701 permits a Federal agency to establish a charge for a service provided by the agency. If a State does not elect to operate an Exchange or does not have an approved Exchange, section 1321(c)(1) of the Affordable Care Act directs HHS to operate an Exchange within the State. Accordingly, at § 156.50(c), we specify that a participating issuer offering a plan through an FFE must remit a user fee to HHS each month that is equal to the product of the monthly user fee rate specified in the annual HHS notice of benefit and payment parameters for FFEs for the applicable benefit year and the monthly premium charged by the issuer for each policy under the plan where enrollment is through an FFE.

OMB Circular No. A–25R establishes Federal policy regarding user fees, and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. As in benefit years 2014 to 2017, issuers seeking to participate in an FFE in benefit year 2018 will receive two special benefits not available to the general public: (1) The certification of their plans as QHPs; and (2) the ability to sell health insurance coverage through an FFE to individuals determined eligible for enrollment in a QHP. These special benefits are provided to participating issuers through the following Federal activities in connection with the operation of FFEs:

- Provision of consumer assistance tools.
- Consumer outreach and education.
- Management of a Navigator program.
- Regulation of agents and brokers.
- Eligibility determinations.
- Enrollment processes.
- Certification processes for QHPs (including ongoing compliance verification, certification and decertification).
- Administration of a SHOP Exchange.

Activities performed by the Federal government that do not provide issuers participating in an FFE with a special benefit are not covered by this user fee.

OMB Circular No. A–25R further states that user fee charges should generally be set at a level so that they are sufficient to recover the full cost to the Federal government of providing the service when the government is acting in its capacity as sovereign (as is the case when HHS operates an FFE). Accordingly, we proposed to set the 2018 user fee rate for all participating FFE issuers at 3.5 percent. This user fee rate assessed on FFE issuers is the same as the 2014 through 2017 FFE user fee rate. For the user fee charges assessed on issuers in the FFE, we have previously received a waiver to OMB Circular No. A–25R, which requires that the user fee charge be sufficient to recover the full cost to the Federal government of providing the special benefit. Similarly, for this year we have sought and expect to receive an exception from OMB Circular No. A–25R, which requires that the user fee charge be sufficient to recover the full cost to the Federal government of providing the special benefit, to ensure that the FFEs can support many of the goals of the Affordable Care Act, including improving the health of the population, reducing health care costs, and providing access to health coverage, in cases where user fee collections do not cover the full cost of the special benefit. We are finalizing the FFE user fee rate as proposed. We will maintain this user fee rate for future benefit years until changed in rulemaking.

Additionally, we have received feedback suggesting that the FFEs would be able to increase enrollment by allocating more funds to outreach and education, a benefit to both consumers and issuers. We sought comment on how much funding to devote to outreach and education, and on whether HHS should expressly designate a specific portion or amount of the FFE user fee to be allocated directly to outreach and education activities, recognizing the need for HHS to continue to adequately fund other critical Exchange operations, such as the call center, *HealthCare.gov,* and eligibility and enrollment activities.

Comment: Commenters supported the proposed FFE user fee rate. Commenters also noted that the FFE user fee rate should decrease over time. One commenter opposed HHS's request for a waiver from OMB Circular A–25R.

Response: For the initial years of FFE operation, we set the user fee rate lower than the full costs of the FFEs and did not collect user fee revenue to cover the full costs of FFE operations. We have not collected user fees to cover the full cost of the Federal functions for the first years of FFE operations. However, we do anticipate gaining economies of scale from functions with fixed costs, and if so, may consider reducing the FFE user fee based on increased enrollment and premiums in the future. We will continue to assess the user fee each year and set the user fee rate to equal the amount necessary to cover the full cost of the special benefits provided. The exception from the OMB circular A–25R allows HHS to ensure that the FFEs can support many of the goals of the Affordable Care Act, including improving the health of the population, reducing health care costs, and providing access to health coverage, in cases where user fee collections do not cover the full cost of the special benefit.

Comment: One commenter requested that the FFE user fee rate be charged as a fixed dollar amount instead of a percent of premium.

Response: As we have stated in prior payment notices, we will continue to assess the FFE user fee as a percent of the monthly premium charged by issuers participating in an FFE, in particular as it relates to the adequacy of funding for ongoing marketing and outreach. In accordance with OMB Circular No. A–25R, issuers are charged the user fee in exchange for receiving special benefits beyond those that are offered to the general public. Setting the user fee as a percent of premium ensures that the user fee generally aligns with the business generated by the issuer as a result of participation in an FFE.

Comment: We received several comments supporting HHS increasing the amount of funds allocated to outreach and education, with some commenters suggesting HHS allocate certain amount of funds to outreach and education efforts for certain subgroups, such as American Indian/Native Alaskan groups and residents in rural areas. A few commenters suggested designating up to 30 percent of user fee revenue for outreach and education for adequate enrollment of young and healthy consumers. One commenter noted that a FFE user fee rate up to 4 percent of premium would be acceptable, particularly since this rate would be spread across plans on- and off-Exchange. Another commenter stated that HHS should evaluate the consumer experience end-to-end to determine which aspects need improvement.

Response: We believe that continuing to use an established portion of FFE user fees for outreach and education

will help expand access to health coverage while benefiting issuers, including by providing issuers and regulators greater confidence that the FFEs' issuers' risk pools will continue to improve. In 2016 and prior years, we designated approximately two to three percent of FFE user fees for consumer education and outreach. We are finalizing a policy to designate approximately three percent (at least) of FFE user fees for those purposes in the future. As enrollment in the FFEs grows, we will continue to adjust our investment in outreach and education efforts to help increase enrollment and also improve the FFEs' issuers' risk pools by enrolling additional young and healthy individuals.

(2) SBE–FP User Fee for the 2018 Benefit Year (§ 156.50)

SBE–FPs enter into a Federal platform agreement with HHS to leverage the systems established by the FFEs to perform certain Exchange functions, and to enhance efficiency and coordination between State and Federal programs. Accordingly, in § 156.50(c)(2), we specify that an issuer offering a plan through an SBE–FP must remit a user fee to HHS, in the timeframe and manner established by HHS, equal to the product of the sum of the monthly user fee rate specified in the annual HHS notice of benefit and payment parameters for State-based Exchanges that use the Federal platform for the applicable benefit year, unless the State-based Exchange and HHS agree on an alternative mechanism to collect the funds. The functions provided to issuers in the SBE–FPs include the Federal Exchange information technology and call center infrastructure used in connection with eligibility determinations for enrollment in QHPs and other applicable State health subsidy programs, as defined at section 1413(e) of the Affordable Care Act; and enrollment in QHPs under § 155.400. As previously discussed, OMB Circular No. A–25R establishes Federal policy regarding user fees, and specifies that a user fee charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. The user fee rate for SBE–FPs is calculated based on the proportion of FFE costs that are associated with the FFE information technology infrastructure, the consumer call center, and eligibility and enrollment services, and allocating a share of those costs to the SBE–FP user fee rate charged for issuers offering QHPs in the SBE–FPs. A significant portion of expenditures for FFE services are associated with the information technology, call center infrastructure, and eligibility determinations for enrollment in QHPs and other applicable State health subsidy programs as defined at section 1413(e) of the Affordable Care Act, and personnel who perform the functions set forth in § 155.400 to facilitate enrollment in QHPs. Based on this, we proposed to charge issuers offering QHPs through an SBE–FP a user fee rate of 3.0 percent of the monthly premium charged by the issuer for each policy under a plan offered through an SBE–FP for the 2018 benefit year. This fee would support FFE operations costs incurred by the Federal government associated with providing the services described above.

We sought comment on this proposed SBE–FP user fee rate. In the 2017 Payment Notice, we set the user fee rate for SBE–FPs at 1.5 percent of premiums charged, rather than the full rate of 3.0, in order to provide a transition year during which States could adjust to the assessment of a user fee in SBE–FP States. We also sought comment on whether the impact of increasing the SBE–FP user fee rate to the full rate should be spread over one additional year.

We intend to review the costs incurred to provide these special benefits each year, and revise the user fee rate for issuers in the FFEs and SBE–FPs accordingly in the annual HHS notice of benefit and payment parameters.

Comment: Some commenters requested that HHS keep the reduced SBE–FP user fee rate of 1.5 percent for the 2018 benefit year and beyond, and that a user fee rate of 3.0 percent allows only 0.5 percent of total premium as revenue for SBE–FPs to carry out their functions. One commenter stated a preference for a lower user fee rate for the 2018 benefit year, supporting an SBE–FP user fee rate of up to 2.0 percent of premiums. Another commenter stated that a SBE–FP user fee rate of 3.0 percent of premiums for issuers offering plans through a SBE–FP does not reflect the scalability of the Exchanges that HHS has noted.

Response: The SBE–FP user fee rate is based on the percent of FFE costs that are attributed to Federal functions associated with the information technology, call center infrastructure, and eligibility determinations for enrollment in QHPs and other applicable State health subsidy programs. We believe issuers offering QHPs through the Federal platform ought to be charged proportionally for the special benefits provided. We have calculated the costs to yield a user fee rate of 3.0 percent for issuers benefiting from functions provided by the Federal platform. However, we understand the need to provide another year to adjust to the increased user fee rate in the SBE–FP States, and so, are finalizing an SBE–FP user fee rate of 2.0 percent for the 2018 benefit year. We will maintain this SBE–FP user fee rate for future benefit years unless changed in future rulemaking. We will continue to assess the SBE–FP user fee rate each year, and expect, in future rulemaking, to propose that SBE–FP issuers would be charged the full user fee rate covering the full share of costs incurred by the Federal platform for the special benefits provided to issuers in SBE–FPs.

Comment: Another commenter suggested HHS require SBE–FPs to allocate a certain portion of a State's assessments on outreach and education.

Response: We are not requiring SBE–FPs to allocate a certain share of the State's assessments at this time, and note that we also do not require the SBE–FPs to set the State assessment at any specific rate.

(3) Single Risk Pool (§ 156.80)

We proposed to amend § 156.80(d) to remove the reference to the transitional reinsurance program, which was established for benefit years 2014 through 2016. To more explicitly reflect how the rating factors under § 147.102 and the single risk pool index rating methodology under § 156.80 work together, we also proposed to restructure paragraph (d)(1) as paragraphs (d)(1)(i) through (iv), adding new proposed paragraph (d)(1)(iii) to provide that the index rate must be calibrated on a market-wide basis to correspond to an age rating factor of 1.0, a geographic rating factor of 1.0, and a tobacco rating factor of 1.0, in a manner specified by the Secretary in guidance. We are finalizing both amendments to § 156.80(d) with minor modifications as described below. Technical guidance will be provided through Unified Rate Review Instructions to ensure accurate and uniform application of the calibration methodology.

Comment: Some commenters thought calibration should be applied at the plan level as opposed to the market level, while another commenter recommended including ''calibrated base rates'' in the Unified Rate Review Template.

Response: The purpose of calibration is to allow the premium rating factors under § 147.102 to be directly and accurately applied to the plan-adjusted index rate to generate the appropriate premium charged to an individual or small employer based on age, geography, and tobacco use. For

example, calibration with respect to the age curve identifies the value on the applicable age curve associated with the weighted average age on the standard age curve. After applying age calibration, the plan-adjusted index rate and the standard age curve can then be used to generate the schedule of premium rates for all ages for each plan.

We proposed that calibration must be applied at the market level because calibration is a common adjustment for all of an issuer's plans in the single risk pool of the State market, even though it only occurs after the plan-adjusted index rate has been determined. However, in response to commenters' concerns, we recognize that it may reduce confusion to codify the calibration provision as a separate step in the index rate setting methodology. Therefore, we are relocating the calibration provision to new paragraph (d)(3) and redesignating existing paragraph (d)(3) as paragraph (d)(4). We are also adding regulation text to reflect the purpose described in the proposed rule—ensuring that any rating variation under § 147.102 may be accurately applied with respect to a particular plan or coverage. We are also specifying in the regulation text that, notwithstanding the codification of the provision as a new step after the application of plan-level adjustments, calibration must be applied uniformly to all plans within the single risk pool of the State market and cannot vary by plan.

b. Essential Health Benefits Package

(1) Premium Adjustment Percentage (§ 156.130)

Section 1302(c)(4) of the Affordable Care Act directs the Secretary to determine an annual premium adjustment percentage, which is used to set the rate of increase for three parameters detailed in the Affordable Care Act: The maximum annual limitation on cost sharing (defined at § 156.130(a)), the required contribution percentage used to determine eligibility for certain exemptions under section 5000A of the Code, and the assessable payment amounts under section 4980H(a) and (b) of the Code. Section 156.130(e) provides that the premium adjustment percentage is the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013, and that this percentage will be published annually in the HHS notice of benefit and payment parameters.

Under the methodology established in the 2015 Payment Notice and amended in the 2015 Market Standards Rule for estimating average per capita premium for purposes of calculating the premium adjustment percentage, the premium adjustment percentage is calculated based on the projections of average per enrollee employer-sponsored insurance premiums from the NHEA, which is calculated by the CMS Office of the Actuary. Accordingly, using the employer-sponsored insurance data, the premium adjustment percentage for 2018 is the percentage (if any) by which the most recent NHEA projection of per enrollee employer-sponsored insurance premiums for 2017 ($5,962) exceeds the most recent NHEA projection of per enrollee employer-sponsored insurance premiums for 2013 ($5,132).[57] Using this formula, we proposed and are finalizing the premium adjustment percentage for 2018 at 16.17303196 percent. We note that the 2013 premium used for this calculation has been updated to reflect the latest NHEA data. Based on the final 2018 premium adjustment percentage, we are also finalizing the following cost-sharing parameters for calendar year 2018.

As described above, we may update the annual premium adjustment percentage in guidance in the future, pursuant to the methodology that has been established through rulemaking. Consistent with § 156.130(e), we also will publish any annual revision to the premium adjustment percentage in the annual HHS notice of benefits and payment parameters.

Maximum Annual Limitation on Cost Sharing for Calendar Year 2018. Under § 156.130(a)(2), for the 2018 calendar year, cost sharing for self-only coverage may not exceed the dollar limit for calendar year 2014 increased by an amount equal to the product of that amount and the premium adjustment percentage for 2018, and for other than self-only coverage, the limit is twice the dollar limit for self-only coverage. Under § 156.130(d), these amounts must be rounded down to the next lowest multiple of 50. Using the premium adjustment percentage of 16.17303196 percent for 2018 that we established above, and the 2014 maximum annual limitation on cost sharing of $6,350 for self-only coverage, which was published by the IRS on May 2, 2013,[58] we are finalizing the 2018 maximum annual limitation on cost sharing at $7,350 for self-only coverage and $14,700 for other than self-only coverage. This represents a 2.8 percent increase above the 2017 parameters of $7,150 for self-only coverage and $14,300 for other than self-only coverage. We may update the maximum annual limitation on cost sharing (for benefit years beyond 2018) in guidance in the future, pursuant to the methodology that has been established through rulemaking.

Comment: We received several comments in support of the increase in the maximum annual limitation on cost sharing. One commenter requested that HHS coordinate with the IRS in setting the maximum out-of-pocket limits for HDHPs so that the maximums are the same.

Response: HHS understands that the annual limitation under § 156.130(a)(2) in a given benefit year may be different than the annual limitation on out-of-pocket expenses for HDHPs, as defined in section 223(c)(2) of the Code. However, HHS and IRS are bound by different statutory parameters when calculating annual out-of-pocket limitations. HHS uses the premium adjustment percentage described above, and, in accordance with section 223(g) of the Code, IRS uses the Consumer Price Index (CPI), a measure of inflation, to set the out-of-pocket limit for HDHPs.

(2) Reduced Maximum Annual Limitation on Cost Sharing (§ 156.130)

Section 1402 (a) through (c) of the Affordable Care Act direct issuers to reduce cost sharing for EHB for eligible individuals enrolled in a silver level QHP. In the 2014 Payment Notice, we established standards related to the provision of cost-sharing reductions. Specifically, in 45 CFR part 156, subpart E, we specified that QHP issuers must provide cost-sharing reductions by developing plan variations, which are separate cost-sharing structures for each eligibility category that change how the cost sharing required under the QHP is to be shared between the enrollee and the Federal government. At § 156.420(a), we detailed the structure of these plan variations and specified that QHP issuers must ensure that each silver plan variation has an annual limitation on cost sharing no greater than the applicable reduced maximum annual limitation on cost sharing specified in the annual HHS notice of benefit and payment parameters. Although the amount of the reduction in the

[57] ''NHE Projections 2015–2025—Tables''. Available at *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html* in Tables 1 and 17. A detailed description of the NHE projection methodology is available at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ProjectionsMethodology.pdf.*

[58] See *http://www.irs.gov/pub/irs-drop/rp-13-25.pdf.*

maximum annual limitation on cost sharing is specified in section 1402(c)(1)(A) of the Affordable Care Act, section 1402(c)(1)(B)(ii) of the Affordable Care Act states that the Secretary may adjust the cost-sharing limits to ensure that the resulting limits do not cause the AVs of the health plans to exceed the levels specified in section 1402(c)(1)(B)(i) of the Affordable Care Act (that is, 73 percent, 87 percent, or 94 percent, depending on the income of the enrollee). Accordingly, we proposed to continue to use a method we established in the 2014 Payment Notice for determining the appropriate reductions in the maximum annual limitation on cost sharing for cost-sharing plan variations. Using the proposed 2018 maximum annual limitation on cost sharing of $7,350 for self-only coverage and $14,700 for other than self-only group coverage, we analyzed the effect on AV of the reductions in the maximum annual limitation on cost sharing described in the statute to determine whether to adjust the reductions so that the AV of a silver plan variation will not exceed the AV specified in the statute. Below, we describe our analysis for the 2018 benefit year and our results.

Consistent with our analysis in the past 2014 through 2017 Payment Notices, we developed three silver level QHPs for purposes of testing, and analyzed the impact on AV of the reductions described in the Affordable Care Act to the estimated 2018 maximum annual limitation on cost sharing for self-only coverage ($7,350). The test plan designs are based on data collected for 2017 plan year QHP certification to ensure that they represent a range of plan designs that we expect issuers to offer at the silver level of coverage through the Exchanges. For 2018, the test plans included a PPO with typical cost-sharing structure ($7,350 annual limitation on cost sharing, $2,215 deductible, and 20 percent in-network coinsurance rate), a PPO with a lower annual limitation on cost sharing ($4,950 annual limitation on cost sharing, $2,895 deductible, and 20 percent in-network coinsurance rate), and an HMO ($7,350 annual limitation on cost sharing, $3,375 deductible, 20 percent in-network coinsurance rate, and the following services with copayments that are not subject to the deductible or coinsurance: $500 inpatient stay per day, $350 emergency department visit, $25 primary care office visit, and $55 specialist office visit). All three test plans meet the AV requirements for silver level QHPs.

We then entered these test plans into the proposed 2018 AV Calculator developed by HHS and observed how the reductions in the maximum annual limitation on cost sharing specified in the Affordable Care Act affected the AVs of the plans. We found that the reduction in the maximum annual limitation on cost sharing specified in the Affordable Care Act for enrollees with a household income between 100 and 150 percent of the Federal poverty level (FPL) (⅔ reduction in the maximum annual limitation on cost sharing), and 150 and 200 percent of the FPL (⅔ reduction), would not cause the AV of any of the model QHPs to exceed the statutorily specified AV level (94 and 87 percent, respectively). In contrast, the reduction in the maximum annual limitation on cost sharing specified in the Affordable Care Act for enrollees with a household income between 200 and 250 percent of FPL (½ reduction), would cause the AVs of two of the test QHPs to exceed the specified AV level of 73 percent. As a result, we proposed that the maximum annual limitation on cost sharing for enrollees in the 2018 benefit year with a household income between 200 and 250 percent of FPL be reduced by approximately ⅕, rather than ½, consistent with what we have proposed in previous years. This would allow issuers flexibility to design innovative plans with varying lower maximum annual limitations on cost sharing and deductibles for the 73 percent plans. We further proposed that the maximum annual limitation on cost sharing for enrollees with a household income between 100 and 200 percent of the FPL be reduced by approximately ⅔, as specified in the statute, and as shown in Table 13. These proposed reductions in the maximum annual limitation on cost sharing should adequately account for unique plan designs that may not be captured by our three model QHPs. We also noted that selecting a reduction for the maximum annual limitation on cost sharing that is less than the reduction specified in the statute would not reduce the benefit afforded to enrollees in aggregate because QHP issuers are required to further reduce their annual limitation on cost sharing, or reduce other types of cost sharing, if the required reduction does not cause the AV of the QHP to meet the specified level. We are finalizing the reductions in the maximum annual limitation on cost sharing for 2018 as proposed. Again, for benefit years beyond 2018, we may reduce the maximum annual limitations on cost sharing for these silver plan variations in guidance by the fractions established through rulemaking (for example, ⅕ for enrollees with incomes between 200–250 percent of the FPL, and ⅔s for enrollees with incomes between 100–200 percent of the FPL).

We also note that for 2018, as described in § 156.135(d), States were permitted to submit for approval by HHS State-specific datasets for use as the standard population to calculate AV. No State submitted a dataset by the September 1, 2016 deadline.[59]

TABLE 13—REDUCTIONS IN MAXIMUM ANNUAL LIMITATION ON COST SHARING FOR 2018

Eligibility category	Reduced maximum annual limitation on cost sharing for self-only coverage for 2018	Reduced maximum annual limitation on cost sharing for other than self-only coverage for 2018
Individuals eligible for cost-sharing reductions under § 155.305(g)(2)(i) (that is, 100–150 percent of FPL)	$2,450	$4,900
Individuals eligible for cost-sharing reductions under § 155.305(g)(2)(ii) (that is, 150–200 percent of FPL)	2,450	4,900
Individuals eligible for cost-sharing reductions under § 155.305(g)(2)(iii) (that is, 200–250 percent of FPL)	5,850	11,700

[59] The annual deadline for submitting State specific data for the actuarial value calculator was announced August 15, 2014. See *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/final-state-avc-guidance.pdf.*

(3) Levels of Coverage: Bronze Plans (§ 156.140)

Section 2707(a) of the PHS Act and section 1302 of the Affordable Care Act directs issuers of non-grandfathered individual and small group health insurance plans, including QHPs, to ensure that these plans adhere to the levels of coverage specified in section 1302(d)(1) of the Affordable Care Act. A plan's coverage level, or AV, is determined based on its coverage of the EHB for a standard population. Section 1302(d)(1) of the Affordable Care Act requires a bronze plan to have an AV of 60 percent, a silver plan to have an AV of 70 percent; a gold plan to have an AV of 80 percent; and a platinum plan to have an AV of 90 percent. Section 1302(d)(3) further directs the Secretary to establish guidelines for the allowable de minimis variation in AVs in the level of coverage of a plan.

Currently, § 156.140(c) permits a de minimis variation of +/− 2 percentage points.[60] In the proposed rule, we proposed to amend the de minimis range for bronze plans that cover and pay for at least one major service, other than preventive services (for which certain services already are required by Federal law to have zero cost sharing), before the deductible to allow a variance in AV of −2 percentage points and +5 percentage points. We further proposed a list of major services which may be covered and paid for before deductible in order to make a bronze plan eligible for the broader de minimis range. The major services proposed were primary care visits, specialist visits, inpatient hospital services, generic drugs, specialty drugs, preferred branded drugs, or emergency room services. Additionally, we proposed that the major service covered before the deductible must apply a reasonable cost-sharing rate to the service to ensure that the service is affordably covered. Finally, we proposed that a bronze plan that covers at least three primary care services before the deductible would qualify as having a major service covered before the deductible.

We proposed this amendment because, without a de minimis adjustment, future calibrations of the AV Calculator may limit issuers' flexibility in designing bronze plans. Further, we believe that bronze plans were not intended to be less generous than catastrophic plans, which are required to provide at least three primary care visits before the deductible. We also proposed that bronze plans that are HDHPs be permitted to have the same adjusted de minimis AV range in order to maintain those plans' eligibility to become HDHPs that could be paired with a health savings account while still adhering to the bronze level of AV.

We are finalizing § 156.140(c) as proposed, with a technical correction to the regulation text to change ''high deductible high plan'' to ''high deductible health plan.'' We are also finalizing the 2018 AV Calculator, which provides the option for issuers to calculate AV for a bronze plan with the broader de minimis range.[61]

Comment: Many commenters supported our proposal to expand the de minimis range to −2 and +5 percentage points for certain types of bronze plans. These commenters supported the increased flexibility in plan design for issuers. Further, these commenters believed that the proposed changes would generate benefits to consumers by promoting creative plan designs and plans with more generous benefits than catastrophic plans. Other commenters supported the proposed requirement that this policy be limited to plans with at least one major service covered before the deductible in applicable plans and to HDHPs. Finally, some commenters supported allowing plans which cover at least three primary care visits before the deductible to qualify for the broader de minimis range. A few commenters did not support this policy because some of these commenters believed that an expanded de minimis range created the potential of higher premiums for bronze plans. Some of these commenters believed that these higher premiums may hurt enrollees in zero cost-sharing plans since these enrollees would see no benefit from changes in the cost-sharing structure of these plans. Some commenters also expressed concerns that increasing the de minimis range of bronze plans would make them indistinguishable from silver plans and inhibit plan design innovation.

Response: We are finalizing the policy as proposed. We believe that this policy provides a balanced approach by ensuring that a variety of bronze plans can be offered, including HDHPs, while ensuring that bronze plans can remain at least as generous as catastrophic plans. We are also finalizing our proposal that a bronze plan with at least three primary care services before the deductible would qualify for the expanded de minimis range. Issuers are not required to utilize the expanded bronze de minimis range, and we do not anticipate that this policy will have a significant impact on average bronze plan premiums. We also note that the purpose of the AV Calculator is to calculate AV to determine the level of coverage (metal level) of a plan, and it was not developed for pricing purposes.

Comment: Most commenters supported the list of major services. Some commenters requested the addition of services, such as habilitative services, rehabilitative services, laboratory services, and urgent care services. A commenter also requested that SBEs have flexibility in determining eligible major services. Other comments included a request for assurances that the policy would only require at least one category of services before the deductible and a request that HHS require at least one formulary tier to be provided before the deductible. Some commenters also requested further guidance on our list of major services.

Response: To qualify for the increased de minimis range, the plan must cover at least one major service before the deductible, with reasonable cost sharing, or meet the requirements to be a HDHP. We consider a major service to include the category of benefits within that service type before the deductible. For example, if a Bronze plan is covering specialist visits before the deductible as the major service to trigger the expanded de minimis range, we would expect that the before deductible cost sharing would apply to the range of specialist visits that the issuer covers. We are finalizing the list of major services as proposed. Therefore, the finalized definition of major services will include primary care visits, specialist visits, inpatient hospital services, generic drugs, preferred brand drugs, specialty drugs, and emergency room services. These major services are applicable to a wide variety of enrollees and could have a significant AV impact. In response to commenters' requests for a wider list of major services, we considered adding services, such as urgent care and laboratory outpatient and professional services to the list of major services. However, these services were omitted due to feasibility concerns. Based on the claims data used in the 2018 AV Calculator, overall utilization of urgent care services is

[60] Under § 156.400, the de minimis variation for a silver plan variation means a single percentage point.

[61] It is the responsibility of the bronze plan issuer to ensure that its bronze plan meets the requirements under this policy at 45 CFR 156.140(c) if the issuer uses the expanded bronze plan de minimis range in the AV Calculator. For more information on the operation of this feature in the 2018 AV Calculator, please refer to the 2018 AV Calculator User Guide and Methodology that are posted at *https://www.cms.gov/cciio/resources/regulations-and-guidance/#Plan* Management.

relatively low.[62] Moreover, given that laboratory services are often accessed in conjunction, or as the result of, access to other services, such as office visits, which may not be covered before the deductible, it is unlikely that the majority of enrollees would access laboratory services before the deductible without having to access other services first. However, we note that nothing in this policy precludes plans (other than HDHPs) from covering additional services before the deductible, subject to applicable AV requirements. Also, nothing is in this policy precludes States from applying other cost-sharing requirements in addition to this policy.

We remind issuers that this policy does not exempt issuers from mental health and substance use disorder parity requirements.[63] This includes the rule that a separate deductible cannot be applied to mental health or substance use disorder benefits and that any deductible applied to such benefits be no more restrictive than the predominant level of the deductible applicable to substantially all medical/surgical benefits in a particular category of benefits as described in 45 CFR 146.136. Section 1302(d)(2)(A) of the Affordable Care Act requires that AV be determined based a standard population (and without regard to the population the plan may actually provide benefits to), which is not the population required for mental health and substance use disorder parity testing. Therefore, the AV Calculator is not intended to demonstrate parity.

Comment: Some commenters made recommendations for reasonable cost-sharing rates for services being covered before the deductible. These suggestions included the use of current cost-sharing review tools, tying reasonable cost sharing to the bronze standardized option rates, using no more than 50 percent enrollee coinsurance; and requiring copays on the cost sharing for the major service. Other commenters had recommendations for display and aggregation of these plans on *HealthCare.gov* and for education to consumers on these types of plans.

Response: We recognize that States are the primary enforcers of AV policy. Further, we recognize that services vary in costs by region and that issuers need flexibility in plan design. However, at a minimum, for the purposes of this bronze plan policy, we believe that any cost-sharing rate that requires the enrollee to pay for more than 50 percent of the coinsurance (or the equivalent copay rate) could be considered an unreasonable cost-sharing rate for the major service.

(4) Application to Stand-Alone Dental Plans Inside the Exchange (§ 156.150)

In the 2017 Payment Notice, HHS finalized § 156.150(a), which establishes a formula to increase the annual limitation on cost sharing for stand-alone dental plans. Specifically, HHS finalized that for plan years beginning after 2017, the annual limitation for an SADP for one covered child would be $350 increased by the percentage increase of the CPI for dental services for the year 2 years prior to the applicable plan year over the CPI for dental services for 2016; and, the annual limitation for an SADP for two or more covered children is twice that.

The formula increases the dollar limit for one covered child (currently set at $350) by the percentage increase of the CPI for dental services for the year 2 years prior to the applicable plan year over the CPI for 2016. For plan year 2018, the percentage increase of the CPI for dental services for the year 2 years prior to the applicable plan year would be equal to the CPI for 2016, resulting in a zero percent increase. Therefore, for plan year 2018, the dental annual limitation on cost sharing is $350 for one child and $700 for two or more children. For plan years after 2018, we may adjust the annual limitation on cost sharing for stand-alone dental plans in guidance based on the formula established by regulations at § 156.150.

We have also received questions on the percentage of premium properly allocable to EHB for plans offered or intended to be offered in the individual market through Exchanges. Under § 156.470, issuers of medical and stand-alone dental plan QHPs must provide to Exchanges an allocation of their QHP premiums to EHBs and other services or benefits. Because non-pediatric dental benefits (sometimes referred to as dental benefits for ''adults,'' meaning individuals age 19 and older) are not EHB under § 156.115(d), no portion of the premium allocable to dental benefits for adults should be included in the allocation to EHB. Any portion of the premium allocable to dental benefits for adults should instead be included in the allocation to other services or benefits.

Comment: We received a number of comments seeking clarification of our description in the proposed rule that stated that, for plan year 2018, the dental annual limitation on cost sharing would be ''$350 for one child and $700 for one or more children.'' Commenters sought clarification of whether the $700 limitation applies to one or more children or two or more children.

Response: The application of the $700 limit to one or more children was in error and we establish the annual limitation on cost sharing for SADPs certified by Exchanges for plan year 2018 as $350 for one child and $700 for two or more children.

Comment: We received a number of comments seeking clarification of how the annual limitations on cost sharing for SADPs certified by Exchanges apply to families with more than one child. Commenters sought clarification of whether a SADP may require additional cost sharing for one child in a family when that child has reached $350 in cost sharing but the family's children collectively have not reached $700 in cost sharing.

Response: In the 2016 Payment Notice, we addressed comments on the application of annual limits on cost sharing under § 156.130 (applicable to all plans covering EHB). We clarified in the rule's preamble that ''The annual limitation on cost sharing for self-only coverage applies to all individuals regardless of whether the individual is covered by a self-only plan or is covered by a plan that is other than self-only.'' (80 FR 10825). Similarly, we clarify that under § 156.150 (applicable to stand-alone dental plans covering the pediatric dental EHB that are certified by an Exchange), the annual limitation on cost sharing for stand-alone dental plans that are certified by an Exchange for one child applies to all children regardless of whether the child is covered by a self-only plan or is covered by a plan that is other than self-only. Therefore, a stand-alone dental plan covering the pediatric dental EHB must limit cost sharing to $350 for each individual child. A stand-alone dental plan covering the pediatric dental EHB must also limit cost sharing to a total of $700 when the plan covers two or more children.

c. Qualified Health Plan Minimum Certification Standards

(1) QHP Issuer Participation Standards (§ 156.200)

Section 156.200(c)(1) implements section 1301(a)(1)(C)(ii) of the Affordable Care Act to require, as part of QHP participation standards, that each QHP issuer offer at least one QHP in the silver coverage level and at least one QHP in the gold coverage level. Section 1311(c)(1) and 1321(a)(1)(A) and

[62] Additional information on the consideration of urgent care services in the 2018 AV Calculator is discussed in the AV Calculator Methodology under the Section entitled ''Consideration of Additional Updates Not Made in the 2018 AV Calculator'' that is available at: *https://www.cms.gov/cciio/resources/regulations-and-guidance/#Plan* Management.

[63] See 45 CFR 156.115(a)(3).

(B) of the Affordable Care Act provide the Secretary of HHS with the authority to establish certification criteria for QHPs and Exchanges. Therefore, HHS proposed to require QHP issuers to offer at least one silver and one gold coverage level QHP through the Exchange throughout each service area in which the issuer offers coverage through the Exchange. We further clarified that an issuer can meet this standard by offering a Multi-State Plan option in both silver coverage and gold coverage levels throughout each service area in which it offers other QHPs through an Exchange.

Specifically, we proposed to amend paragraph (c)(1) to require a QHP issuer to offer through the Exchange at least one QHP in the silver coverage level and at least one QHP in the gold coverage level, as described in § 156.140, throughout each service area in which it offers coverage through the Exchange. This added specificity would ensure that issuers applying for certification of their QHPs offer a silver and gold plan throughout each service area in which they offer coverage through the Exchange.

We are finalizing these provisions as proposed.

Comment: We received several comments in support of this proposal as consistent with the intention of section 1301(a)(1)(C)(ii) of the Affordable Care Act. Other commenters suggested that HHS work with the Office of Personnel Management to assure that a similar rule applies to Multi-State Plans.

Response: As evidenced by QHP application submissions to the FFEs, QHP issuers have generally interpreted this requirement to apply at the service area level, as opposed to at the Exchange level, meaning that an issuer must offer at least one QHP in the silver coverage level and at least one QHP in the gold coverage level throughout each service area in which it offers a QHP through the Exchange (that is, one QHP that has an AV of 70 percent and one QHP that has an AV of 80 percent, plus or minus up to two percentage points). If the requirement were to be interpreted at the Exchange level, a QHP issuer could be in technical compliance with the requirement by offering at least one QHP in the silver coverage level and at least one QHP in the gold coverage level in a very limited service area, and not offer such coverage through its full service area in a meaningful way. HHS believes that the Affordable Care Act did not intend to allow an issuer to offer a silver and gold QHP through the Exchange in merely one service area in a State, while offering other products through the Exchange, such as bronze or catastrophic QHPs, in other service areas. This modification will ensure that consumers have an adequate choice of QHPs at different coverage levels. Further, the Affordable Care Act assumed calculation of both APTC and the premium tax credit based on the availability of a second lowest cost silver plan. As such, we are finalizing the rule as proposed to modify our regulations to more accurately align with QHP issuer practice and our interpretation of the intention of section 1301(a)(1)(C)(ii) of the Affordable Care Act. HHS continues to work with OPM to align MSP requirements with QHP certification standards where applicable.

Comment: Another commenter requested that determinations of silver/gold standards be delegated to the States. An additional commenter requested that the rule be expanded to include bronze level plans.

Response: We maintain that the intent of section 1301(a)(1)(C)(ii) of the Affordable Care Act was to require all QHP issuers in all States to meet the standard to offer silver and gold level plans in each service area they serve in the Exchange. We believe that requiring QHP issuers to offer QHPs at both the silver and gold levels of coverage will provide enough consumer choice without the need to require bronze level coverage under a similar standard. Therefore, we are finalizing with no additional modifications. Because this standard applies to QHPs, and because the Secretary was directed to establish criteria for certification of QHPs, it is appropriate for HHS to establish this requirement, and not to delegate the determination of the standard to the States.

In the 2014 Payment Notice, in order to help ensure that qualified employers and qualified employees enrolling through an FF–SHOP are offered a robust set of QHP choices, we finalized a policy at § 156.200(g) under which an individual market FFE will certify a QHP only if the QHP issuer (or an issuer in the same issuer group) offers through the FF–SHOP of the State at least one QHP in the silver coverage level and at least one QHP in the gold coverage level, unless no issuer in the issuer group has a greater than 20 percent share of the small group market in the State, based on earned premiums. We indicated in the preamble of the 2014 Payment Notice, in response to a commenter who suggested we reevaluate the policy in 2 years, that we would evaluate the effectiveness of the tying provision on an ongoing basis.

HHS sought comment, based on feedback from stakeholders, on whether the policy at § 156.200(g) is still necessary or appropriate in the FF–SHOPs. This provision does not apply in State-based Exchanges or State-based SHOPs, and we are not aware of any State-based SHOPs that have implemented a similar policy. We are also cognizant that the policy may be discouraging issuer participation on the individual market FFEs. Therefore, we requested comment on whether we should eliminate this policy for the FF–SHOPs, for plan years beginning on or after January 1, 2018.

HHS recognizes that eliminating the SHOP participation provision could have the effect of reducing FF–SHOP issuer participation in States, and sought comment on the implications for small businesses and how to accommodate such an effect. For example, in such a circumstance, in consideration of the ongoing investments that would be required to maintain the FF–SHOPs, including for premium aggregation services, we considered providing for elimination of enrollment through FF–SHOP Web sites and providing for alternative means of enrollment into SHOP QHPs, either in States that would be particularly affected by this change or in all FF–SHOPs. In addition, we sought comment on how entities such as Web-brokers or third party administrators could help to facilitate enrollment in available SHOP QHPs. We sought comment on what other regulatory provisions would need to be modified or eliminated in such a circumstance, and on whether provisions relating to the operation of enrollment through a SHOP Web site should generally be optional at the election of the Exchanges, including State-based SHOPs.

For the reasons expressed below, HHS is modifying the SHOP participation provision at § 156.200(g) so that it is applicable only for plan years beginning before January 1, 2018; thus, the current participation requirement will not apply as an FFE certification standard for QHPs for plan years beginning on or after January 1, 2018. We will monitor the impact that this modification may have on employers seeking coverage through an FF–SHOP and on State small group markets in general, to assess whether additional adjustments need to be made moving forward. At this time, HHS is not making or finalizing any proposals to provide for new alternatives for enrollment through the FF–SHOPs. HHS may propose new alternatives for enrollment through the FF–SHOPs through future rulemaking.

Comment: Many commenters supported removing the SHOP participation provision. One commenter supported removing this provision

because small employers have indicated a preference for enrolling in off-Exchange coverage. Commenters also stated that they believed that issuers should be allowed to participate in FF–SHOPs on a voluntary basis and that the FF–SHOPs should rely on an open and competitive model that attracts issuers and employers without requiring certain issuers to participate. Additionally, while FF–SHOP enrollment for certain issuers subject to the SHOP participation provision is low, the issuers are still required to pay user fees in addition to financing administrative and operational implementation costs to comply with HHS criteria. Another commenter supported the removal of the SHOP participation provision as a means to promote issuer participation in the individual market FFEs and provide more choices for consumers in individual market FFEs. Other commenters stated that the SHOP participation provision is misaligned with HHS's desire to treat all issuers consistently and uniformly and with the Exchanges' purpose as a market-driven program in which participation is voluntary.

In contrast, other commenters were against our proposal to remove the SHOP participation provision and stated that they believe that this provision strengthens the FF–SHOPs. They stated that removing the provision would have severe impacts on FF–SHOP issuer participation and QHP availability in various States, and would hinder access to the Small Business Health Care tax credit under section 45R of the Code. Another commenter stated that eliminating the tying provision could hamper employers' ability to provide employee choice. A commenter stated that the current requirement is not an undue burden.

Response: After careful reevaluation of the SHOP participation provision at current § 156.200(g), we are amending the SHOP participation provision so that it applies as an FFE certification standard only for plan years beginning before January 1, 2018. We have considered the feedback provided by various stakeholders that issuer participation in a SHOP should be voluntary. While the provision was initially promulgated to promote issuer participation in the FF–SHOPs, we believe that issuers should be able to make decisions about whether to participate in an FF–SHOP that are independent of their decision to participate in an individual market FFE. We acknowledge that eliminating this requirement may affect issuer participation in the FF–SHOPs, and thus may affect the availability of employee choice and access to the Small Business Health Care tax credit under section 45R of the Code; however, we believe that removing this requirement will encourage more issuers to participate more fully in the individual market FFEs, and we believe that increased participation will help to ensure that more participants in the individual market have access to financial assistance through Exchange plans. Therefore, we are amending § 156.200(g) to make the provision no longer applicable for plan years beginning on or after January 1, 2018, in order to promote issuer participation in the individual market FFEs and provide more choices for consumers in individual market FFEs for plan years beginning on or after January 1, 2018. As stated above, we will monitor the impact that this modification may have on employers seeking coverage through the FF–SHOPs and on State small group markets in general, to assess whether additional adjustments need to be made moving forward.

Comment: Some commenters were opposed to doing away with online enrollment in the FF–SHOPs. One commenter believed that replacing the online enrollment system with an alternative would undermine the FF–SHOP program and reduce key benefits of choice, transparency and competition, purchasing power for employers, and simplicity. The commenter further believed the online FF–SHOP enrollment process enables employers to compare all plans impartially and was concerned that enrollment through a broker or issuer would not provide such impartiality. Another commenter recommended that the FF–SHOP enrollment process be streamlined through the development of broker resources. An additional commenter was concerned about removing premium aggregation services. The commenters believed that without a platform to facilitate multi-issuer employee choice, FF–SHOPs will suffer from even lower enrollment because they will have very little to distinguish themselves from the small group market outside the SHOPs. Another commenter was concerned about the transfer of Exchange functions to other entities, such as Web-brokers, and allowing these entities increased responsibilities that had been delegated to Exchanges under the Affordable Care Act and in regulation. This commenter also requested increased freedom for Exchanges to develop State-based approaches to SHOP sustainability and growth. We also received a comment opposing the elimination of the FF–SHOP enrollment Web site unless enhanced direct enrollment is in place through the Web sites of Web-brokers and issuers.

We also received a comment that recommended that HHS formally seek stakeholder input to ensure that alternative enrollment approach proposals are workable to meet the needs of small employers. The commenters believed that any such approach should account for how small employers seek determinations of their SHOP eligibility and access the Small Business Health Care tax credit under section 45R of the Code.

We also received several comments and proposed alternative solutions for FF–SHOP enrollment. These ideas included not only working with Web-based entities, but also with traditional agents, brokers, and general agents, working with third-party administrators and brokers (including Web-brokers), using an application programming interface or a reporting process to provide HHS with FF–SHOP application information to make eligibility determinations, relying on technology sites to support enrollment activities, pivoting to the private sector for FF–SHOP operations, and maintaining employee choice. We also received comments that HHS should capitalize on lessons learned from Web-broker participation in the Individual Market Exchanges and that Web-brokers should only be required to display plans for which they have established relationships with issuers. Additionally, we received comments stating that some Web-based entities have been providing online enrollment capabilities, plan management, call center support, notification capabilities, automated premium payment functions, effectuation, and reconciliation capabilities to State-based SHOPs and are positioned to assist the FF–SHOPs. One commenter suggested not providing any additional regulation or oversight on how plans should be displayed or any additional requirements in addition to what is already codified in regulation. The commenter recommended that HHS remain involved in FF–SHOP functions required by statute and retain control over key data, consumer protections, and program integrity. The commenter also recommended that HHS allow vendors to support all remaining functions.

Response: We thank commenters for their input, and will consider the suggestions provided. As mentioned above, at this time, HHS is not making or finalizing any proposals to provide for new alternatives for enrollment through the FF–SHOPs.

(2) Network Adequacy Standards (§ 156.230)

In the 2017 Payment Notice, HHS finalized a policy to provide information about QHP network breadth on *HealthCare.gov* that will assist consumers with plan selection. For the 2017 plan year, HHS is piloting the network breadth indicator in four States on *HealthCare.gov* as an indicator of a QHP's relative network coverage.[64] The results of this pilot will determine if HHS expands the pilot to additional States for the 2018 plan year and beyond. In the final 2017 Letter to Issuers in the Federally-facilitated Marketplaces, we described how the network breadth indicator is calculated. In the proposed rule, HHS proposed to incorporate more specificity into these indicators for the 2018 plan year, and more specifically to assist consumers in identifying whether a particular plan is offered as part of an integrated delivery system. We noted that for integrated delivery systems, the breadth of the network for a plan as calculated through the network breadth methodology in the final 2017 Letter to Issuers in the Federally-facilitated Marketplaces may not accurately reflect the relative ability of a consumer to access providers compared to consumers enrolled in plans in the same county that are not part of an integrated delivery system. For plan year 2018, HHS proposed incorporating this specificity into the network information displayed in all States where network breadth is displayed. To define which plans use an integrated delivery system, HHS proposed to use the alternate essential community provider (ECP) standard in § 156.235(b) and solicited comments on whether some plans, which should be categorized as within an integrated delivery system, would not meet this definition. We are finalizing this policy, with certain modifications described below.

Comment: Many commenters supported identifying QHPs that are part of an integrated delivery system. Additionally, many commenters requested that the identification be done in a way that consumers will understand. Some commenters did not support the idea of specifying which plans are offered as part of an integrated delivery system, because the commenters believe that it may be confusing to consumers. One commenter supported the use of the alternate ECP definition to define integrated delivery systems. However, many commenters believe that the definition lacked sufficient focus on coordination or accountability. Some commenters recommended expanding the indicators beyond integrated delivery systems to display when a QHP's network is significantly similar to the issuer's Medicaid network.

Response: We agree that providing information to consumers about plans that are part of an integrated delivery system will be beneficial to consumers. We intend to make classifications as clear as possible with the intent of avoiding consumer confusion. We also understand commenters' concerns about using the alternate ECP standard for integrated delivery systems. We are finalizing the use of the alternate ECP standard in § 156.235(b), but will also allow issuers that do not meet the alternate ECP standard to be classified as using an integrated delivery system if they are able to provide a justification for this classification. The criteria for this justification will be included in the 2018 Letter to Issuers in the Federally-facilitated Marketplaces.

In the proposed rule, we reminded issuers that § 156.230(e) takes effect in plan year 2018. This provision, finalized in the 2017 Payment Notice, requires QHP issuers to count the cost sharing paid by the enrollee for an essential health benefit provided by an out-of-network ancillary provider at an in-network setting towards the enrollee's in-network annual limitation on cost sharing for QHPs in certain circumstances. That is, if a QHP enrollee received an EHB in an in-network setting, such as an in-network hospital, but as part of the provision of the EHB the enrollee was charged out-of-network cost sharing for an EHB provided by an out-of-network ancillary provider, that cost sharing would apply towards the annual limitation on cost sharing. Alternatively, the QHP issuer could provide a written notice to the enrollee by the longer of when the issuer would typically respond to a prior authorization request timely submitted or by 48 hours before the provision of the benefit. The written notice would notify the enrollee that additional costs may be incurred for the EHB provided by an out-of-network ancillary provider in an in-network setting, including balance billing charges, unless such costs are prohibited under State law; and that any additional charges may not count toward the in-network annual limitation on cost sharing. HHS proposed that this policy apply to QHPs, both on and off Exchanges, regardless of whether the QHP covers out-of-network services, and sought comment on other policy changes that could limit ''surprise bills'' for consumers. We are finalizing our policy as proposed.

Comment: Some commenters supported the proposal to apply § 156.230(e) to QHPs that do not cover out-of-network services. Other commenters opposed the expansion of the policy's application because of concerns that these QHPs were specifically designed not to cover out-of-network services. Commenters had further concerns that costs and premiums will be increased from the expansion of this policy to other types of plans. Additionally, a commenter requested clarification regarding the cost sharing for these plans. Some commenters also supported applying the policy both on and off the Exchanges while other commenters opposed its application off the Exchanges. Other commenters expressed opposition to § 156.230(e) as the commenters believe the policy does not encourage providers to contract with issuers and allows providers to charge unlimited rates. Certain commenters also suggested alternative options, such as requiring the issuer to demonstrate its attempts to contract with the ancillary provider or specifying that the issuer not be held liable for failure of timely notice if the issuer is not made aware of potential out-of-network charges. Other commenters requested more specificity on the scope of the application of the policy, such as defining the list of ancillary services that this policy would apply to or limiting the regulation to facilities instead of settings.

Commenters were also concerned that the 48-hour timeframe was infeasible, given that every service does not require prior authorization and therefore, the issuer may not have the opportunity to send the notice. Several commenters wanted a requirement for issuers to count the cost sharing towards the annual limitation on cost sharing even when notice is given (or otherwise hold the enrollee harmless). Some commenters also wanted more specificity in the notices so that they can better assist the enrollees and wanted to ensure that the policy did not replace requiring an adequate network. Certain commenters wanted emergency services to apply and other commenters did not want emergency services to apply. One commenter requested for a safe harbor from § 156.230 for plans that experience a substantial increase in enrollment.

Response: We are finalizing our proposal to apply § 156.230(e) to QHPs

[64] Updated CMS Bulletin on Network Breadth Information for Qualified Health Plans on *HealthCare.gov*. Sept. 30, 2016. Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/NA-Pilot-Final-Guidance-Clean-093016.pdf.*

regardless of whether the QHP covers out-of-network services and we are reaffirming that this policy applies to all QHPs, although this policy is not intended to, and does not, preempt any State law on this topic. Applying this policy to all QHPs provides a level playing field for all QHPs, and ensures that all QHP enrollees will be given this protection. As discussed in the 2017 Payment Notice, while this policy is not a full solution to the adverse financial consequences of inadvertently receiving treatment from an out-of-network provider, we believe this policy will increase transparency and ensure that consumers receive notice of the possible consequences of using an out-of-network ancillary provider. We also believe that this policy, when proper, timely notice is not provided by the issuer, will provide some mitigation of these consequences. We intend to continue to monitor these situations, including issuers' timely compliance with this provision, to consider whether further rulemaking is needed. As for the cost sharing for plans that do not cover out of network services, if timely notice is not provided, issuers must count the in-network charge for the EHB service provided by an out-of-network ancillary provider at an in-network setting towards the in-network annual limitation on cost sharing for the QHP, with any other charge assessed by the out-of-network ancillary provider treated as balance billing.

Comment: Commenters submitted a variety of comments on other policy changes that could limit consumer ''surprise billing.'' Suggestions from commenters included increased transparency on plans' out-of-network coverage, a more targeted focus on enrollee education, requiring similar provisions to the NAIC model act requirements [65] (including facility notices and a provider and issuer remediation process), limiting the amount out-of-network providers can charge for services, banning balance billing, focusing efforts at a State level to address the unique conditions of the different markets, requiring providers to disclose all charges before the service, and having HHS exercise its Medicare conditions of participation authority to ensure hospitals have available physicians in each specialty who contract with the same health plans as the hospital. Some commenters also recommended considering certain State laws or incorporating hospital networks and providers into the solution. Many commenters submitted comments about other network adequacy issues beyond the scope of the proposed rule.

Response: We will take these comments into consideration as we continue to address the complex issue of surprise billing of consumers for out-of-network providers at in-network settings.

(3) Essential Community Providers (§ 156.235)

In the 2017 Payment Notice, we finalized that, for QHP certification cycles beginning with the 2018 benefit year, HHS would credit issuers for multiple contracted or employed full-time equivalent (FTE) practitioners at a single location, up to the number of available FTE practitioners reported to HHS by the essential community provider (ECP) facility through the ECP petition process and published on the HHS ECP list. However, in the proposed rule, we proposed to continue the 2017 benefit year ECP calculation methodology for the 2018 QHP certification cycle—that is, a methodology that would count multiple providers at a single location as a single ECP toward both the available ECPs in the plan's service area and the issuer's satisfaction of the ECP participation standard. We similarly proposed to continue the 2017 benefit year calculation methodology for certain plans seeking to demonstrate that the number of its providers that are located in Health Professional Shortage Areas or five-digit zip codes in which 30 percent or more of the population falls below 200 percent of the Federal poverty level satisfies a minimum percentage of available ECPs in the plan's service area. We stated that HHS is conducting provider outreach to collect provider data necessary to implement a methodology that would credit issuers for multiple contracted or employed full-time equivalent practitioners at a single location. We sought comment on these proposals. We also sought comment on the best approach for measuring hospital ECP participation in a health plan's provider network for the 2019 benefit year.

We are finalizing these provisions as proposed.

Comment: Many commenters, including providers, provider associations, consumer advocacy groups, and health insurance issuers strongly supported our proposal to continue counting multiple providers at a single location as a single ECP toward the 30 percent ECP standard. Some of these commenters opposed reliance on FTE practitioners in future years, stating that issuers do not keep track of FTEs, the number of FTEs at each location is too fluid to serve as a reliable measure of an issuer's satisfaction of the ECP standard, and that practitioner credentialing variances at each facility further complicates the validity of using FTEs as a proxy for access to care for Exchange enrollees. Some commenters stated that reliance on FTEs alone might not ensure geographic distribution of ECPs and an adequate range of health care services provided by ECPs. These commenters recommended that HHS conduct an impact analysis on consumer access prior to implementing an FTE practitioner methodology.

In contrast, several consumer advocacy groups, an alliance of health insurance plans, and one State opposed our proposal to continue counting multiple providers at a single location as a single ECP toward the 30 percent ECP standard. These commenters urged HHS to calculate an issuer's satisfaction of the 30 percent ECP standard based on counting multiple contracted FTE practitioners at a single location as multiple ECPs, stating that the wide variability in the number of available practitioners at each ECP facility supports this methodology for more accurately measuring consumer access to ECPs. These commenters recommended that HHS not rely solely on issuer satisfaction of the 30 percent ECP threshold to ensure adequate access to care for low-income medically underserved individuals. They recommended that HHS continue to recognize the importance of the geographic distribution and range of health care services provided by ECPs.

Two commenters opposed HHS's proposal to continue the 2017 benefit year ECP calculation methodology, as well as an FTE practitioner counting methodology for calculating an issuer's satisfaction of the 30 percent ECP standard. Instead, these commenters recommended that HHS work with issuers to identify an appropriate counting methodology.

Response: We are finalizing our proposal to continue the 2017 benefit year ECP calculation methodology for general ECP standard issuers described in § 156.235(a)(2)(i) and alternate ECP standard issuers described in § 156.235(b)(2)(i). Continuing the 2017 benefit year ECP calculation methodology will allow HHS to continue collecting provider data necessary to consider alternative calculation methodologies. We remain committed to partnering with stakeholders to identify an appropriate counting methodology.

Comment: In response to our solicitation for best approaches for

[65] Health Benefit Plan Network Access and Adequacy Model Act. Available at *http://www.naic.org/store/free/MDL-74.pdf.*

measuring hospital ECP participation in a health plan's provider network for the 2019 benefit year, two commenters recommended the counting of hospital beds as an accurate and appropriate measure of a health plan's provider network capacity to provide hospital ECP access to consumers. These commenters cautioned, however, that bed counts alone do not fully assess a hospital's capacity to provide certain services, especially children's special need services. These commenters suggested that HHS consider a combination of bed counts with analysis of a hospital's core set of service lines to ensure that the hospital has the expertise to provide the care needed by vulnerable populations. One commenter recommended that HHS continue to use bed count data collected from the Children's Hospital Association Annual Benchmark Report (ABR) and the American Hospital Association Annual Survey, when available, and allow hospitals to verify those counts through the online ECP petition.

In contrast, one commenter expressed concern that hospital bed counts may not be a reliable measure, stating that health plans do not track bed counts and they do not factor into provider contracting or health plan operations. Another commenter recommended that HHS continue to count hospital ECPs as one entity, rather than counting practitioners who provide services within the hospital but may not all participate in a health plan's network.

Finally, one commenter recommended that HHS remove children's hospitals and freestanding cancer centers from the definition of an ECP, noting that they are both already accounted for in network adequacy requirements. The commenter expressed concern that their inclusion has had the unintended consequence of vesting in these providers undue influence in their negotiations with QHPs, rather than enhancing the safety net. The commenter stated that, in contrast, critical access hospitals, rural referral centers, disproportionate share hospitals (DSH) and DSH-eligible hospitals, and sole community hospitals might be overlooked in the formation of a network if not for the ECP requirement, as there is no other mechanism to ensure their inclusion in a payer's network. Several commenters urged that HHS require QHP issuers to contract with any willing provider, rather than only 30 percent of the available ECPs in a plan's service area. Some of these commenters suggested that HHS require that QHP issuers offer good faith contracts to all willing providers in specific ECP categories (that is, FQHCs, Ryan White providers, hemophilia treatment centers, and children's hospitals) in the plan's service area. We also received several additional comments on topics specific to disaggregation of certain ECP categories, clarifications to the definition of an ECP, and additional regulatory recommendations pertaining to family planning providers.

Response: We appreciate suggestions on the best approach for measuring hospital ECP participation in a health plan's provider network for the 2019 benefit year. As we continue to collect provider data necessary to consider alternative approaches for measuring hospital ECP participation in a health plan's provider network, we remain committed to partnering with stakeholders to identify and analyze such alternative approaches.

(4) Enrollment Process for Qualified Individuals (§ 156.265)

We proposed an amendment to § 156.265 requiring differential display of standardized options. A discussion of the provision is contained in the preamble discussion regarding § 155.220, which concerns standards for agents and brokers using the direct enrollment process.

(5) Issuer Participation for the Full Plan Year (§ 156.272)

We proposed adding § 156.272 to provide, as a condition of certification, that QHP issuers in all individual market Exchanges make their QHPs available for enrollment through the Exchange for the full plan year for which the plan was certified, unless a basis for suppression under § 156.815 applies. We also proposed that issuers in all SHOP Exchanges must make their QHPs available for enrollment through the SHOP Exchange for the full plan year for which the plan was certified, unless a basis for suppression under § 156.815 applies.

Under our existing civil money penalty authority at § 156.805(a)(1), QHP issuers in FFEs and FF–SHOPs that do not comply with § 156.272(a) or (b) could be subject to civil money penalties (CMPs). (Issuers would not be subject to CMPs if a basis for suppression under § 156.815 applies.) We also proposed at § 156.272(c) that if an issuer fails to comply with § 156.272(a) or § 156.272(b), HHS could, at its discretion, preclude that issuer from participating in the FFEs and FF–SHOPs, for up to the two succeeding plan years. We sought comments on this proposal, including on the applicability of this section to all Exchanges and the potential use of CMPs for QHP issuers in the FFEs and FF–SHOPs. We are finalizing the provision as proposed.

Comment: We received several comments in support of the proposal. A few commenters opposed applying the proposal to the individual market Exchanges, SHOPs, or both. These commenters suggested that the States should maintain authority over the participation requirements of QHPs and that there should be exceptions when issuers face financial capacity constraints.

Response: We are finalizing the provision as proposed. While States maintain primary regulatory authority over issuers' market participation, this requirement ensures that consumers enrolling in the individual market Exchanges during limited open enrollment periods have the same plan choice as those enrolling during open enrollment, and that qualified employers and qualified employees have generally consistent plan choices throughout the plan year. Consistent with § 155.1000(d), in a SHOP that certifies QHPs on a calendar-year basis, we interpret § 156.272(b) to require issuers to make a SHOP QHP available for enrollment through the SHOP for the duration of any employer's plan year that began in the calendar year for which the QHP was certified, even if the plan year ends after the calendar year for which the QHP was certified.

We note that the regulation contains an exception to the obligation to make a QHP available through the Exchange or SHOP (as applicable) for the full plan year for which it was certified if a basis for suppression applies under § 156.815. One of these bases relates to financial capacity limits under § 147.104(d)(1). To operationalize such a suppression, an FFE would accept a reasonable request on these grounds from the applicable State regulatory authority. A plan subject to such a suppression would be prohibited from offering coverage in the applicable market for a period of 180 days from when it denied coverage under the financial capacity limit, under § 147.104(d)(2).

(6) Non-Certification and Decertification of QHPs (§ 156.290)

Currently, under § 156.290(b), when a QHP issuer elects not to seek certification from the Exchange for a subsequent, consecutive certification cycle, that QHP issuer is required to provide notification to enrollees. However, a QHP issuer is not required to provide notification to enrollees when it is denied certification for a subsequent, consecutive certification cycle by the Exchange. HHS proposed to require that issuers denied QHP

certification provide notice to enrollees within 30 days of the date of an Exchange's denial of certification for a subsequent, consecutive certification cycle. HHS also proposed to amend the section title from Non-renewal and decertification of QHPs to Non-certification and Decertification of QHPs, and revise the paragraph headings for § 156.290(a) and (b) to reflect that QHPs are certified on an annual basis rather than renewed. We sought comment on each of these proposals. We are finalizing the proposal with a modification that accounts for the discontinuation notices required under § 147.106.

Comment: Several commenters supported our proposal. Other commenters suggested HHS not impose a new notice requirement. Instead these commenters suggested that HHS rely on notices issuers are already obligated to send to inform enrollees of renewals and product discontinuances under § 147.106. Some commenters responded that a new notice may be duplicative or confusing for consumers.

Response: We are finalizing the requirement with a modification to specify that the form and manner of the notices required under this provision will be the same as the form and manner for the discontinuation notices required under § 147.106. Under the final § 156.290(b), both issuers that do not seek certification for a subsequent, consecutive certification cycle and those that seek and are denied such certification are required to notify enrollees. They are required to do so in the manner specified by the Secretary under § 147.106. On September 2, 2016, we published a Bulletin with updated Federal standard renewal and product discontinuation notices, which specify the form and manner for the notices required under these sections.

(7) Other Considerations

Increasingly, the Exchanges serve as laboratories for innovations through which QHPs develop new ways to provide quality, cost-effective health care coverage that responds to consumers' preferences and needs. We have heard from issuers about innovations around paying for high-quality care, working with health care professionals to encourage coordinated care, standardizing benefits in ways that promote high-value care, and using analytics to engage with consumers in creative ways that improve their health and bolster retention. We also continue to seek to foster market-driven programs in the Exchanges that can improve the management of costs and care, and that provide consumers with quality, person-centered coverage. We continue to believe that innovative issuer, provider, Exchange, and local programs or strategies can successfully promote and manage care, in a manner that contributes to better health outcomes and lower rates while creating important differentiation opportunities for market participants. In the proposed rule, we sought comment on ways in which we can facilitate such innovation, and in particular on whether there are regulations or policies in place that we should modify for 2018 in order to better meet the goals of affordability, quality, and access to care. We note that our past solicitations for means of facilitating innovation have prompted questions about whether an individual market plan is permitted to offer a wellness program. We are confirming that a plan is permitted to offer a participatory wellness program in the individual market provided that such a program is consistent with applicable State law and available to all similarly situated individuals enrolled in the individual health insurance coverage. As we explained in the preamble to the final regulations under section 2705(j) of the PHS Act [66] and as reflected in the definition at § 146.121(f)(1)(ii), a participatory wellness program is a program that does not condition a reward on an individual satisfying a standard related to a health factor or that does not provide a reward.

Comment: A majority of commenters supported our efforts to drive innovation in a variety of areas including benefit design, plan offerings, care coordination, consumer education and support tools, and technology infrastructure. Several commenters expressed support for continuing efforts related to patient-centered, high-value, coordinated care. The commenters suggested that HHS ensure that the Affordable Care Act's core consumer protections and coverage improvements be preserved, and one encouraged that HHS go farther to encourage use of preventive services. A few commenters requested that HHS ensure that further flexibility for plans does not produce policies that impede access for individuals with high-cost, chronic conditions or rare conditions. They also requested that we require that innovative benefit designs include predictable, simple appeals processes so that individuals can access needed treatments and services. A few commenters made suggestions about coordinated care noting the importance of community health and ensuring sufficient and sustainable support for providers.

We received a few comments requesting that we require QHP issuers to accept charitable premium assistance on behalf of members. These commenters requested that we clarify the role of nonprofits, hospitals, hospital-affiliated foundations and other charitable organizations, in making third-party premium payments. One commenter commended HHS for not proposing to change current rules regarding when a QHP issuer must accept third-party payments from private grantees.

We also received comments requesting that we dedicate more Federal resources toward both general and targeted outreach to increase the number of insured and improve the insurance market risk pools. Specifically, one commenter noted the importance of attracting and enrolling middle income enrollees and another commenter noted the importance of attracting younger, healthier enrollees.

A number of commenters encouraged HHS to continue developing additional consumer tools that provide consumers with information that enables them to choose health plans based on the quality and effectiveness of care they will receive. We also received comments requesting that we develop and promote quality initiatives or programs that focus on clinical improvement, on the unique needs of children, and on women of reproductive age.

One commenter requested that we build the technical infrastructure for a single-streamlined application and the ability to screen for eligibility for Medicaid family planning-only coverage. Another commenter encouraged HHS to explore options that would provide Exchanges flexibility to offer products such as vision insurance, disability, and other products that small businesses want as part of their full benefits package, as well as products that are hard to access in the individual market compared to the group market.

Commenters encouraged HHS to work with States to permit innovative State-level solutions, including oversight of and consistency of rate review. One commenter encouraged us to combine coverage expansion with quality improvement and delivery system reform by working through a multi-stakeholder process including working with purchasers, health plans, providers and consumer advocates to develop a robust set of initiative. One commenter discouraged us from interfering in private markets for insurance.

A few commenters suggested that we work on stabilizing the risk pool,

[66] See 78 FR 33157 (June 3, 2013).

explore options for extending the reinsurance program, and ensure the viability of the individual market. They requested that we work with Congress to ensure sufficient risk corridor funds are available and are paid to make issuers whole.

Two commenters requested that we make changes to policies surrounding pharmacy benefits and prescription drugs. One commenter requested that restrictions on use of mail-service pharmacy offerings should be made less restrictive to facilitate more mail order usage, encouraged HHS to revisit its decision to impose dual standards on formulary development, and requested that we assess whether we can waive (or allow States to waive) the Medicaid best price rebate program requirement in the Exchange. Another commenter requested that we revisit the regulation related to external review of pharmacy exception requests (§ 156.122(c)(3)(ii)) and noted their concern with adherence to external review timeliness standards by issuers.

Response: We appreciate these comments and will take them under consideration.

d. Eligibility and Enrollment Standards for Qualified Health Plan Issuers on State-Based Exchanges on the Federal Platform (§ 156.350)

In the 2017 Payment Notice we established, in § 156.350, that in order to participate in an SBE–FP, a QHP issuer must comply with HHS regulations and guidance pertaining to issuer eligibility and enrollment functions as if the issuer were an issuer of a QHP in an FFE. These regulations and guidance include those requirements specified in paragraphs (a)(1) through (3) of § 156.350, which currently include § 156.285(c)(8)(iii). For the same reasons that we proposed to add new paragraph § 155.200(f)(4), we also proposed to amend paragraph § 156.350(a)(2) to specify that, in order to participate in an SBE–FP using the Federal platform for SHOP enrollment functions, a QHP issuer would be required to send enrollment reconciliation files on at least a monthly basis according to a process, timeline, and file format established by the FF-SHOPs, consistent with § 156.285(c)(5). Under our proposal, issuers in States operating an SBE–FP that uses the Federal platform for SHOP enrollment functions would be required to follow the process applicable in the FF–SHOPs, as described in § 156.285(c)(5). We are finalizing this amendment and as noted in the proposed rule, this amendment will become effective with the effective date of the final rule.

For a discussion of the addition of § 156.350(a)(4) in this final rule, please see the preamble to § 155.400.

e. Reconciliation of the Cost-Sharing Reduction Portion of Advance Payments Discrepancies and Appeals (§ 156.430(h))

As implemented in the regulations at § 156.430, HHS reconciles the cost-sharing reduction portion of advance payment amounts by comparing what the enrollee in a cost-sharing reduction plan variation actually paid in cost sharing to what the enrollee would have paid if enrolled in a standard plan. In order to facilitate reconciliation of the cost-sharing reduction portion of advance payments to the actual amount provided for enrollees in cost-sharing reduction variation plans, issuers must report the amount they paid for each eligible medical claim, the amount enrollees paid for the claims, and the amount of cost sharing that would have been paid for the same services under the corresponding standard plan. This information is used to reconcile the actual cost-sharing amounts provided for each policy in a plan variation to the estimated payments that the issuer had been paid in advance.

As set forth at § 156.410(d)(3), issuers are not reimbursed for any cost-sharing reductions provided to enrollees who were erroneously assigned to a plan variation more generous than the one for which they are eligible. Any cost-sharing reductions, to the extent thereby or otherwise erroneously provided (such as cost-sharing reductions for non-EHB or non-covered services, or cost-sharing reductions provided after a policy has been terminated) must be excluded from the reconciliation process.

In order to ensure the integrity of reconciliation of the cost-sharing reduction portion of advance payments for the 2014 and 2015 benefit years, we implemented automatic system checks that validated data at the time of data submission, for example, matching QHP or subscriber IDs to HHS data for a benefit year, and verifying the issuer used the applicable methodology and submitted applicable attestations. This resulted in the rejection of some cost-sharing reduction amounts submitted by issuers. Additionally, some issuers were unable to prepare complete data files in time to meet the cost-sharing reduction data submission deadline. In order to provide issuers with an opportunity to address potential errors that would have directly impacted the calculation of their reconciled cost-sharing reduction amounts, HHS implemented a process for reporting data discrepancies for the 2014 and 2015 benefit year.[67]

We proposed and are finalizing the addition of new paragraph (h)(1) to § 156.430 to require that any issuer that reports a discrepancy and seeks to dispute the notification of the amount of reconciliation of the cost-sharing reduction portion of advance payments in the manner set forth by HHS, must report the discrepancy to HHS within 30 calendar days of notification of the amount of reconciliation of the cost-sharing reduction portion of advance payments as described in § 156.430(e).

We are also finalizing our proposal to codify § 156.430(h)(2), which provides that an issuer may appeal the amount of reconciliation of the cost-sharing reduction portion of advance payments under the process set forth in § 156.1220 of this subchapter only if it has submitted a discrepancy report, where a discrepancy is identifiable, for its cost-sharing reduction reconciled amounts for the applicable benefit year. We note that irrespective of whether an issuer has filed a discrepancy report under § 156.430(h)(1), a request for reconsideration under § 156.1220 may only be filed to contest a processing error by HHS, HHS's incorrect application of the relevant methodology, or HHS's mathematical error, as required under § 156.1220. In light of the comments received, we are amending § 156.1220(a)(3)(v) to provide that issuers may request reconsideration for reconciliation of cost-sharing reductions, within 60 calendar days of the date of the discrepancy resolution decision.

Comment: Several commenters supported the discrepancy reporting process; however some commenters requested that HHS provide more than 30 calendar days to file a discrepancy report.

Response: HHS believes 30 calendar days is adequate time to file a discrepancy. The process will be similar to the first year of reconciliation for 2014 and 2015 benefit year cost-sharing reductions, when issuers were able to file discrepancies in a timely manner and HHS worked with issuers to resolve data issues. However, in light of the comments received, we are amending § 156.1220(a)(3)(v) to provide that

[67] On June 23, 2016 HHS released FAQs and technical specifications on the discrepancy resolution process for issuers to follow to report a discrepancy related to reconciliation of the cost-sharing reduction portion of advance payments. The technical specifications are available on the Center for Consumer Information and Insurance Oversight Web site: *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Cost-Sharing-Reduction-Reconciliation-Discrepancy-Resolution-Inbound-Specification.pdf.*

issuers may request reconsideration for reconciliation of the cost-sharing reduction portion of advance payments, within 60 calendar days of the date of the cost-sharing reduction reconciliation discrepancy resolution decision.

f. Compliance Reviews of QHP Issuers in Federally-Facilitated Exchanges (§ 156.715)

In § 156.715, HHS established that QHP issuers are subject to compliance reviews in order to ensure ongoing compliance with Exchange requirements and standards. In § 156.715(b), HHS requires QHP issuers to make records that pertain to their activities on an FFE available to HHS. In the first few years of FFE operations, the vast majority of QHP issuers were responsive and cooperative with the compliance reviews. QHP issuers generally submitted requested documents on time and were responsive to requests for additional information. However, a few QHP issuers were less responsive to HHS, which has resulted in unnecessary delays of the compliance reviews. In the proposed rule, HHS proposed to amend this section to specify HHS's authority to impose remedies authorized under subpart I of part 156 in situations where the QHP issuer is non-responsive or uncooperative with the compliance reviews authorized under this section. We are finalizing the amendments as proposed.

Comments: Several commenters fully supported the proposal to require QHP issuers to be responsive to compliance reviews. Other commenters did not support the proposal. However, all commenters who were opposed indicated that additional clarification to define ''non-responsiveness'' would alleviate their concerns.

Response: We are finalizing the amendments as proposed. We further clarify that examples of non-responsive or uncooperative QHP issuer behavior could be the failure to submit requested documentation on time, or repeated delays in submitting documentation. We expect QHP issuers to respond to documentation request timelines that are articulated in compliance review materials.

g. Qualified Health Plan Issuer Responsibilities

(1) Administrative Appeals (§ 156.1220)

As discussed in the preamble to § 153.630 above, we are adding paragraphs (a)(1)(vii) and (viii) to § 156.1220, providing an administrative appeal right to issuers to contest only a processing error by HHS, HHS's incorrect application of the relevant methodology, or HHS's mathematical error with respect to the findings of a second validation audit as a result of risk adjustment data validation; or the calculation of a risk score error rate as a result of risk adjustment data validation, respectively.

Because risk adjustment payments and charges for the 2015 benefit year will not be adjusted for results of the risk adjustment data validation process, we do not believe an administrative appeal right for risk adjustment data validation results is necessary for the 2015 benefit year. Therefore, we proposed that the first year of risk adjustment data validation appeals would be the 2016 benefit year, which is the first year that risk adjustment data validation will affect the amount of risk adjustment payments and charges. We received no comments on this proposal, and are finalizing the provision to limit the new § 156.1220(a)(1)(vii) and (viii) finalized above (specifying that an issuer may file a request for reconsideration under this section to contest a processing error by HHS, HHS's incorrect application of the relevant methodology, or HHS's mathematical error, with respect to the findings of a second validation audit or the calculation of a risk score error rate as a result of risk adjustment data validation) to administrative appeals with respect to risk adjustment data for the 2016 benefit year and beyond. We are finalizing our proposal to amend § 156.1220(a)(2) regarding the materiality threshold for filing a request for reconsideration to include a reference to the administrative appeals related to the risk adjustment data validation process. We also finalize our proposed amendment to § 156.1220(a)(3)(ii) to add a reference to risk adjustment data validation and to provide that issuers have 30 calendar days to request reconsideration from the date of the notification of the findings of a second validation audit and the calculation of a risk score error rate as a result of risk adjustment data validation. We believe 30 calendar days is sufficient for issuers to review the findings of a second validation audit or the calculation of a risk score error rate as a result of risk adjustment data validation and to submit a request for reconsideration.

Also as discussed in the preamble to §§ 153.630 and 156.430(h), we proposed requiring issuers to report discrepancies related to risk adjustment data validation and discrepancies related to the reconciliation of the cost-sharing reduction portion of advance payments, if the issue is identifiable, prior to filing a request for reconsideration under § 156.1220. In light of comments received, we are finalizing our proposal to § 156.1220(a)(4)(ii), to provide that, notwithstanding § 156.1220(a)(1), a reconsideration with respect to a processing error by HHS, HHS's incorrect application of the relevant methodology, or HHS's mathematical error may be requested only if, to the extent the issue could have been previously identified, the issuer notified HHS of the dispute through the applicable process for reporting a discrepancy set forth in § 153.630(d)(2), § 153.710(d)(2), or § 156.430(h)(1), and the dispute has not been resolved.

Additionally, in light of comments received to § 156.430(h)—the reconciliation of the cost-sharing reduction portion of advance payments discrepancies and appeals—we are amending § 156.1220(a)(3)(v) to clarify that issuers may request reconsideration for reconciliation of cost-sharing reductions, within 60 calendar days of the date of the cost-sharing reduction reconciliation discrepancy resolution decision. In light of experience from the 2014 and 2015 benefit year reconciliation of the cost-sharing reduction portion of the advance payments process, HHS believes that resolution of discrepancies may resolve many, if not all issues an issuer may appeal. HHS believes that finalizing an appeal window which begins once issuers receive a discrepancy resolution decision from HHS will provide an informal opportunity for the issuer and HHS to resolve any issues and will result in reduced burden on issuers to file appeals. For clarity, we provide the following example. On June 30, 2018, an issuer receives the notification of the amount of reconciliation of the cost-sharing reduction portion of advance payments as described in § 156.430(e). Under § 156.430(h), within 30 calendar days of receiving this notification, the issuer files a discrepancy, in this example, on July 30, 2018. If applicable, the issuer submits additional or corrected data in response to HHS validations. On August 30, 2018, HHS notifies the issuer of the discrepancy resolution decision. The issuer will then have 60 calendar days to request reconsideration of the discrepancy resolution decision, that is, by October 30, 2018. Therefore, we are amending § 156.1220(a)(3)(v) to clarify that issuers may request reconsideration for reconciliation of cost-sharing reductions within 60 calendar days of the date of the cost-sharing reduction reconciliation discrepancy resolution decision, effective beginning with the 2016

benefit year cost-sharing reduction reconciliation cycle.

Comment: Numerous commenters supported our proposed amendment to § 156.1220(a)(3)(ii) to add a reference to risk adjustment data validation and to provide that issuers have 30 calendar days to request reconsideration from the date of the notification of the findings of a second validation audit and the calculation of a risk score error rate as a result of risk adjustment data validation. Some commenters requested that HHS allow issuers to appeal the resolution of interim discrepancies related to the risk adjustment data validation initial audit sample provided by HHS under § 153.630(b)(1).

Response: HHS is finalizing the provisions as proposed. The initial validation audit entity is under contract with the issuer and HHS does not produce the initial validation audit results. Additionally, we believe that providing an interim discrepancy reporting process prevents the initial validation audit and subsequent second validation audit from being performed on an inaccurate sample of enrollees, thereby ensuring that the second validation audit can occur based on a valid and accurate initial validation audit sample. This allows issuers to identify any issues with the initial validation audit sample while those issues can still be addressed, rather than allowing an inaccurate sample of enrollees to permeate the initial validation audit, the second validation audit, and the calculation of error rates. Therefore, to ensure HHS can meet the June 30th requirement to report benefit year risk adjustment transfer amounts, including payment adjustments reflecting risk adjustment data validation error rates, we believe that it is more efficient to resolve any issues related to the risk adjustment data validation initial audit sample provided by HHS under § 153.630(b)(1) during an interim discrepancy reporting process.

Comment: One commenter requested that HHS permit issuers potentially impacted by risk adjustment appeals to resubmit risk corridors and MLR forms and issue MLR rebates after the resubmission period closes.

Response: HHS provided direction on this issue in § 153.710(g)(2), which provides that an issuer must report during the current MLR and risk corridors reporting year any adjustment made or approved by HHS for any risk adjustment payment or charge, including an assessment of risk adjustment user fees; any reinsurance payment; any cost-sharing reduction payment or charge; or any risk corridors payment or charge before August 15, or the next applicable business day, of the current MLR and risk corridors reporting year, unless instructed otherwise by HHS. An issuer must report any adjustment made or approved by HHS for any risk adjustment payment or charge, including an assessment of risk adjustment user fees; any reinsurance payment; any cost-sharing reduction payment or charge; or any risk corridors payment or charge where such adjustment has not been accounted for in a prior MLR and Risk Corridor Annual Reporting Form, in the MLR and Risk Corridors Annual Reporting Form for the following reporting year.

(2) Direct Enrollment With the QHP Issuer in a Manner Considered To Be Through the Exchange (§ 156.1230)

We proposed a number of modifications and new requirements in § 155.220 which would apply to Web-brokers using the direct enrollment channel. We proposed to add a number of these standards to §§ 156.265 and 156.1230(b) so that they also apply to issuers using direct enrollment on a FFE. Specifically, in § 156.1230, we proposed to: (1) Specify that HHS may immediately suspend the QHP issuer's ability to transact information with the Exchange if HHS discovers circumstances that pose unacceptable risk to Exchange operations or Exchange information technology systems until the incident or breach is remedied or sufficiently mitigated to HHS's satisfaction; (2) require QHP issuers to demonstrate operational readiness and compliance with applicable requirements prior to their Web sites being used to complete QHP selections; and (3) require QHP issuers to provide consumers with correct information regarding FFEs, QHPs offered through the FFEs and insurance affordability programs, and refrain from marketing or conduct that is misleading, coercive, or discriminatory. A more detailed discussion of these provisions is contained in the preamble discussion regarding § 155.220.

(3) Other Notices (§ 156.1256)

Section 156.1256 requires health insurance issuers offering coverage through an FFE or an SBE–FP to notify enrollees of material plan or benefit display errors under certain circumstances. We proposed to change the paragraph cross-referenced in § 156.1256 from § 155.420(d)(4) to § 155.420(d)(12) to reflect our proposal to codify in § 155.420(d)(12) the special enrollment period for material plan or benefit display errors. Since the noticing requirement in § 156.1256 is limited to material plan or benefit display errors and resulting special enrollment periods, proposed § 155.420(d)(12) is a more appropriate reference for this section. We also proposed to make some minor non-substantive changes to the regulation text. We sought comments on this proposal.

We are finalizing this change as proposed.

Comment: One commenter expressed support for aligning the noticing requirement at § 156.1256 with the proposed special enrollment period for material plan or benefit display errors at § 155.420(d)(12) to provide clarity to stakeholders about this noticing requirement. One commenter requested that this noticing requirement be extended to State-based Exchanges and that it be extended to include errors on the Web site, in marketing materials, or in other information provided by an issuer, a direct enrollment entity, or an agent or broker.

Response: While we agree that clear and timely notification by an issuer of a material plan or benefit display error and the availability of a special enrollment period is most beneficial to an enrollee, we defer to States that operate State-based Exchanges, other than SBE–FP, to determine the appropriate timing and content of such requirements for issuers participating on their Exchanges. Similarly, while we recognize that incorrect QHP information, regardless of source, can be confusing to consumers, this noticing requirement is limited to those material plan or benefit display errors that may qualify an individual for a special enrollment period, as described at § 155.420(d)(12).

10. Part 157—Employer Interactions With Exchanges and SHOP Participation

For a discussion of the provisions of this proposed rule related to part 157, please see the preamble to § 155.725. We are finalizing the proposal with modifications. For the reasons discussed in the preamble discussion of § 155.725(g), we are finalizing the proposed amendments at § 155.725(g) so that they generally do not apply to State-based Exchanges that are not using the Federal platform for SHOP functions. We are therefore modifying our proposed amendments to § 157.205 so that they generally apply only in FF–SHOPs and in SBE–FPs utilizing the Federal platform for SHOP functions. We are also modifying the proposed rule text for consistency with our position regarding when a newly qualified employee becomes otherwise eligible for coverage within the meaning of § 147.116, which is discussed further

above in the preamble to § 155.725(g). Additionally, in this final rule we are making a conforming amendment to § 157.205(e)(1) to reflect the amendments made at § 155.725(g).

11. Part 158—Issuer Use of Premium Revenue: Reporting and Rebate Requirements

a. Newer Experience (§ 158.121)

(1) Deferred Reporting of Newer Business

The MLR December 1, 2010 interim final rule (75 FR 74863) adopted 45 CFR 158.121 to allow issuers to defer reporting of experience of policies newly issued and with fewer than 12 months of experience until the following reporting year, if such policies contribute to 50 percent or more of the issuer's total earned premium for the MLR reporting year. This flexibility is intended to take into consideration the special circumstances of newer plans, consistent with section 2718 (c) of the PHS Act. As explained in the interim final rule, the rationale for deferring experience of newly issued policies is that claims experience can be substantially lower than the premium revenue from those policies during the year in which the coverage is issued (although this may occur to a lesser extent now than it did prior to introduction of the Affordable Care Act market reforms), and could create a barrier to the entry of new issuers into a market. To align MLR reporting with the 2014 market reform requirement that non-grandfathered coverage generally must provide coverage for a consecutive 12-month period (see definitions of ''plan year'' and ''policy year'' in § 144.103), in the proposed rule we proposed to modify § 158.121 to allow issuers to defer, for MLR purposes, reporting of data for newer experience if 50 percent or more of the issuer's total earned premium for the MLR reporting year is attributable to newly issued policies with 12 full months of experience, rather than only policies with less than 12 months of experience. We are finalizing this provision as proposed.

Comment: Most commenters supported our proposal. Several commenters stated that the option to defer MLR reporting for a full 12 months will encourage new issuers to enter the market and allow issuers to gather data in order to make sound actuarial calculations. Many commenters who expressed support for the proposal recommended that HHS take action to recognize the special circumstances of newer plans and mitigate the impact of the MLR on growth, competition, and innovation. However, some commenters cautioned HHS to ensure that modifications to the MLR regulations preserve the MLR's objective of protecting consumers and providing transparency in public reporting. One commenter also requested clarification regarding the definitions of ''total earned premium'' and ''newly issued policies with 12 full months of experience'' as used in this section.

Response: We agree with those commenters that suggested that the amendment will encourage new issuers to enter the market. We also recognize the importance of ensuring that modifications to the MLR regulations do not erode consumer protections promised by the law, and we will continue to monitor issuers' usage of this provision closely and its impact on consumers. We intend to clarify the definition of ''newly issued policies'' used in this section when we update the MLR Annual Reporting Form Instructions for the future reporting years; we believe that ''earned premium'' is adequately defined in § 158.130. We are finalizing this proposal. Consistent with the comments received that recommended that HHS mitigate the impact of the MLR on newer plans, as well as to align with the accompanying option to limit rebate liability for new and rapidly growing issuers (discussed below), this amendment will be implemented for the 2016 MLR reporting year.

b. Rebating Premium if the Applicable Medical Loss Ratio Standard Is Not Met (§§ 158.232, 158.240)

(1) Limit on Rebate Liability

Section 2718(b)(1)(B)(ii) of the PHS Act requires, beginning on January 1, 2014, the MLR to be calculated as an average of 3 consecutive years of experience. When an established issuer's MLR falls below the applicable MLR standard in a given year, the 3-year averaging spreads the actual payment of the rebate over the period of 3 years. This allows issuers to offset low and high MLRs within any 3-year period, enabling issuers to potentially pay a lower overall rebate. However, issuers that newly enter the market are only able to calculate their first two MLRs based on 1 or 2 years of experience, which can lead to distorted MLR calculations and could be a barrier to the entry of new issuers into a market.

In the proposed rule, we proposed to amend §§ 158.232 and 158.240 to mitigate the impact of 3-year averaging on new and rapidly growing issuers and thereby reduce barriers to entry and promote competition in health insurance markets. This flexibility is intended to take into consideration the special circumstances of smaller and newer plans, consistent with section 2718(c) of the PHS Act. Under our proposal, if an issuer elects this flexibility, the maximum single-year rebate liability attributable to a given calendar year would be limited to no more than the amount determined based on the issuer's MLR calculated using only that year's experience. In these circumstances, we additionally proposed to adjust the maximum rebate liability attributable to a given calendar year in each of the two subsequent reporting years to reflect restatement of claims incurred in that calendar year as of March 31 following each of those 2 subsequent reporting years, as well as to reflect the credibility adjustment applicable in each of those 2 subsequent reporting years.

We further proposed that for an issuer that elects this option, the outstanding rebate liability with respect to each year in the aggregation would be determined by reducing the maximum rebate liability with respect to that year by any rebate payments made toward it in the two prior years (as applicable), starting with the earliest year in the relevant aggregation. Finally, we proposed that the actual rebate payable by the issuer for a given reporting year would be limited to the lesser of the amount of the combined outstanding rebate liability for all calendar years included in the aggregation or the amount calculated for the reporting year based on a multi-year average MLR. By design, our proposal would operate such that it would only benefit new issuers and established issuers that experience rapid growth and whose MLR falls below the standard in 1 year and increases within the following 2 years.

We further proposed to make the use of the rebate liability limit optional for issuers, as well as to clarify § 158.232 by defining the term ''preliminary MLR'' to refer to an MLR calculated without applying any credibility adjustment, and to explicitly specify instances where § 158.232 was intended to refer to experience of a single year, rather than 3 years.

We are finalizing these provisions as proposed.

Comment: Most comments received on this topic supported our proposal. Several commenters suggested that HHS implement this modification for the 2016 MLR reporting year. Several commenters suggested that HHS provide clarification by: (1) Providing an example on how the process will work for an issuer that is not a start-up; and (2) discussing the methodology for the

two subsequent reporting years after the rebate limiting option is applied. Again, some commenters cautioned HHS to ensure that modifications to the MLR regulations preserve the MLR's objective of protecting consumers, and one commenter suggested that HHS impose limits on the proposed provision in order to prevent gaming.

Response: We are finalizing this provision as proposed. We agree with those commenters that suggested that the modification should be implemented for the 2016 MLR reporting year. Additionally, we agree that it is important to ensure that modifications to the MLR regulations do not result in a loss of value to consumers. However, we note that the option to limit the rebate liability generally does not reduce rebates to consumers below the required value, but rather only limits it in a given calendar year in order to recognize the special circumstances of newer and smaller issuers by ensuring the equitable treatment of new or growing issuers. We also note that this option by design can benefit issuers only when they are disproportionately impacted by the 3-year averaging. For the same reason, this option will benefit such issuers proportionately to the size of their experience in the relevant State and market in each of the years included in the aggregation. For established issuers that do not experience rapid growth, the combined outstanding rebate liability for all years included in the aggregation will generally equal or exceed the rebate calculated for the reporting year based on a 3-year average MLR; thereby making this option unattractive. We offered a simplified illustration in the proposed rule (81 FR 61517) and intend to publish on our Web site an updated MLR Calculator and Formula Tool in the near future that will enable users to evaluate the impact of this provision under various circumstances, and illustrate the application of rebate payments made in prior years against the maximum rebate liability of each year.

III. Amendments to Special Enrollment Periods and the Consumer Operated and Oriented Plan Program

A. Background

1. Legislative and Regulatory Overview

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this final rule, we refer to the two statutes collectively as the Affordable Care Act.

Subtitles A and C of title I of the Affordable Care Act reorganized, amended, and added to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets.

Section 1311(c)(6)(C) of the Affordable Care Act directs the Secretary of HHS to require an Exchange to provide for special enrollment periods specified in section 9801 of the Code and other special enrollment periods under circumstances similar to such periods under part D of title XVIII of the Act.

Section 1322 of the Affordable Care Act directs the Secretary to establish the CO–OP program to foster the creation of consumer-governed, private non-profit health insurance issuers to offer QHPs in the individual and small group markets in the States in which they are licensed. The CO–OP program, in addition to improving consumer choice and plan accountability, also seeks to promote integrated models of care and enhance competition in the Exchanges. Section 1322 establishes eligibility standards for the CO–OP program and terms for loans, and provides basic standards that organizations must meet to participate in this program and become a CO–OP, including market participation and governance requirements.

a. Special Enrollment Periods

In the July 15, 2011 **Federal Register** (76 FR 41865), we published a proposed rule establishing special enrollment periods for the individual Health Insurance Exchange. We implemented these special enrollment periods in a final rule published in the March 27, 2012 **Federal Register** (77 FR 18309) (Exchange Establishment Rule). In the January 22, 2013 **Federal Register** (78 FR 4594), we published a proposed rule amending certain special enrollment periods, including the special enrollment periods described in § 155.420(d)(3) and (7). We finalized these rules in the July 15, 2013 **Federal Register** (78 FR 42321).

In the June 19, 2013 **Federal Register** (78 FR 37032), we proposed to add a special enrollment period at § 155.420(d)(10). We finalized this proposal in the Oct. 30, 2013 **Federal Register** (78 FR 65095). In the May 27, 2014 **Federal Register** (79 FR 30348), we published a proposed rule amending § 155.420(b), (c), (d)(4), (d)(5), (d)(9), (d)(10), and (e). We finalized these provisions in the May 27, 2014 **Federal Register** (79 FR 30348). In the October 1, 2014 **Federal Register** (79 FR 59138), we published a correcting amendment related to § 155.420(b).

In the November 26, 2014 **Federal Register** (79 FR 70673), we proposed to amend § 155.420(b), (c), (d)(1), (d)(2), (d)(4), and (d)(6). We finalized these provisions in the February 27, 2015 **Federal Register** (80 FR 10866). In the July 7, 2015 **Federal Register** (80 FR 38653), we issued a correcting amendment to § 155.420(d)(2). In the December 2, 2015 **Federal Register** (80 FR 75487) (proposed 2017 Payment Notice), we sought comment and data related to existing special enrollment periods, including data relating to the potential abuse of special enrollment periods. In the March 8, 2016 **Federal Register** (81 FR 12203) (2017 Payment Notice), we stated that in order to review the integrity of special enrollment periods, the FFEs will conduct an assessment by collecting and reviewing documents from consumers to confirm their eligibility for the special enrollment periods under which they enrolled.

In the May 11, 2016 **Federal Register**, we published an interim final rule with comment (81 FR 29146) implementing amendments to the parameters of select special enrollment periods. This final rule finalizes these amendments.

b. CO–OP Program

In the July 20, 2011 **Federal Register** (76 FR 43237), we published a proposed rule governing the CO–OP program (proposed CO–OP Rule). On December 13, 2011, we published the final CO–OP Rule (76 FR 77392).

In the March 27, 2012 **Federal Register**, we published a final rule implementing components of the Exchanges and setting forth standards for eligibility for Exchanges (77 FR 18474) (Exchange Establishment Rule). This rule amended the regulations regarding the CO–OP program.

In the May 11, 2016 **Federal Register**, we published an interim final rule with comment (81 FR 29146) implementing amendments to the governance requirements established for Consumer Operated and Oriented Plans (CO–OPs) under the CO–OP Rule. This final rule finalizes these amendments.

2. Stakeholder Consultation and Input

HHS has consulted stakeholders on the policies related to implementation of the Affordable Care Act, including special enrollment periods and CO–OPs. We have held a number of listening sessions with consumers, providers, employers, health plans, the actuarial

community, and State representatives, to gather public input. We consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners, regular contact with States, and meetings with health insurance issuers, organizations participating in the CO–OP program, trade groups, consumer advocates, employers, and other interested parties. We have held a number of recent meetings with issuers (including CO–OPs), regulators, and consumer groups relating to the effects of special enrollment periods on the risk pool, and on CO–OPs' attempts to raise private capital. We considered all public input we received as we developed the policies in this interim final rule with comment.

3. Structure of Final Rule

The regulations outlined in this final rule will be codified in 45 CFR parts 155 and 156. The regulations in part 155 amends certain special enrollment periods. The regulations in part 156 establish eligibility criteria, CO–OP standards, and loan terms under the CO–OP Program. We finalize amendments related to the definitions of pre-existing issuer and representative as well as revisions to the governance requirements for CO–OPs in order to provide flexibility and support their financial stability.

B. Provisions of the Interim Final Rule and Analyses and Responses to Public Comments

In the May 11, 2016 **Federal Register** (81 FR 29146), we published the ''Patient Protection and Affordable Care Act; Amendments to Special Enrollment Periods and the Consumer Operated and Oriented Plan Program'' interim final rule with comment. We received 13 comments, including from 3 issuers/issuer trade associations, 2 providers/provider associations, 2 research/policy groups, 3 advocacy groups, and 3 individuals. The comments received included a number of comments and suggestions that will not be addressed in this final rule because they were outside the scope of the interim final rule.

1. Special Enrollment Periods (§ 155.420)

Special enrollment periods provide a critical pathway to coverage for qualified individuals who experience qualifying events and need to enroll in or change plans outside of the annual open enrollment period or during open enrollment with a coverage effective date earlier than generally provided during the open enrollment period. One such special enrollment period described in § 155.420(d)(7) may be granted to a qualified individual or enrollee, or his or her dependent, who gains access to new QHPs as a result of a permanent move.

As discussed in the Exchange Establishment Rule (77 FR 18310, 18392), the special enrollment period in § 155.420(d)(7) was intended to afford individuals the full range of plan options when they relocate, which maximizes consumer choice and increases competition in the health insurance market. However, this special enrollment period was never intended to provide an opportunity for enrollment in coverage where individuals make a permanent move solely for the purpose of gaining health coverage outside of the annual open enrollment period. Stakeholders have raised concerns that, while such use of this special enrollment period may be consistent with the plain language of the rule, it is not aligned with the provision's intent. This use has the potential to destabilize the health insurance market by creating an opportunity for adverse selection where persons undertake a permanent move solely for the purpose of gaining health coverage, in which they would otherwise not be qualified to enroll. Because of concerns that unintended uses of the permanent move special enrollment period will lead to adverse selection and immediate, unexpected losses in the remaining months of this year, which could lead to significant premium increases or issuers exiting the market, we believed that action was needed as soon as possible, and delaying the rule revisions would be impracticable and contrary to the public interest, so we made these changes effective May 11, 2016 through 81 FR 29155.

We amended the eligibility parameters for this special enrollment period by adding requirements in § 155.420(d)(7)(i) and (ii). In paragraph (i), we require that individuals be enrolled in minimum essential coverage as described in 26 CFR 1.5000A–1(b) for one or more days in the 60 days preceding the date of the permanent move in order to qualify for the special enrollment period based on a permanent move.

The addition of paragraph (i) required further amendments to the rule to maintain the availability of the permanent move special enrollment period for certain other individuals who should continue to be able to access this special enrollment period without the requirement of being previously enrolled in minimum essential coverage. Specifically, we made a necessary addition in paragraph (d)(7)(ii) to maintain eligibility for a special enrollment period for individuals previously living outside of the United States or in a United States territory who move to a location within the United States, so long as they seek to enroll in coverage within 60 days of completing their permanent move.

In light of the addition of these new requirements, we made a further change to § 155.420(d)(7) and to (d)(3) related to incarcerated individuals. As noted in the preamble to the Exchange Establishment Rule (77 FR 18392), qualified individuals newly released from incarceration are eligible for the special enrollment period afforded to individuals under the current version of paragraph (d)(7). However, paragraph (d)(7) as amended in this rule no longer enabled these individuals to qualify for the special enrollment period because the health care coverage offered to incarcerated individuals in correctional facilities is generally not considered minimum essential coverage. Incarcerated individuals are also not eligible for Exchange coverage.

Therefore, we amended paragraph § 155.420(d)(3) to include individuals who become newly eligible for a QHP due to a release from incarceration (other than incarceration pending disposition of charges), in addition to those who become newly eligible for a QHP by becoming a United States citizen or national or a lawfully present non-citizen already included in this paragraph. In so doing, we removed the current language in paragraph (d)(3) that stated that a qualified individual or his or her dependent ''which was not previously a citizen, national, or lawfully present individual gains such status'' and replaced it with a cross reference to § 155.305(a)(1). This did not change the scope of the current special enrollment period and the population who qualified. We added a cross reference to § 155.305(a)(2) for individuals who are no longer incarcerated, other than incarcerated pending disposition of charges.

In order that, at their option, Exchanges could continue to offer advanced availability of the special enrollment period for those who become newly eligible for a QHP due to a release from incarceration now included in paragraph (d)(3), we amended paragraph § 155.420(c)(2) to include this population. If an Exchange should or already has exercised this option to offer advance availability to those who become newly eligible for a QHP due to a release from incarceration, it must ensure that the coverage effective date is on the first day of the month following

the release from incarceration, as was required when this population was included in the special enrollment period in paragraph (d)(7) of this section. Accordingly, we amended § 155.420(b)(2)(iv) to include those who become newly eligible for a QHP due to a release from incarceration now included in paragraph (d)(3).

The amendment to § 155.420(d)(7) also made the special enrollment period for a permanent move inaccessible to qualified individuals who were previously living in a non-Medicaid expansion State and, during the same timeframe, were ineligible for APTC solely because of a household income below 100 percent of the Federal poverty level (FPL), but who become newly eligible for APTC as a result of a permanent move to another State. By being previously ineligible for both Exchange coverage with APTC (because of their household income) and Medicaid (solely because of the State's decision not to expand), these individuals likely would have been exempted from the requirement under section 5000A(e)(1) of the Code and its implementing regulations to maintain minimum essential coverage; or they would likely have been eligible for an exemption from the minimum essential coverage requirement under § 155.605(d) or (e). As a result, these individuals were therefore unlikely to qualify for the special enrollment period for a permanent move, as amended. In order to continue to provide for a special enrollment period for these individuals, we amended § 155.420(d)(6)(iv) to include individuals who were previously living in a non-Medicaid expansion State and, during the same timeframe, were ineligible for Medicaid, but who become newly eligible for APTC as a result of a permanent move. This change secured the continued availability of a special enrollment period to qualified individuals who move out of a non-Medicaid expansion State to a State where they may newly qualify for APTC, but who might no longer qualify for the special enrollment period under § 155.420(d)(7), as amended in this rule, because they did not previously have minimum essential coverage for one or more days in the 60 days preceding the date of the permanent move.

In addition, as discussed in the 2017 Payment Notice, we are conducting an assessment of QHP enrollments that were made through special enrollment periods in the FFEs to ensure that consumers' eligibility for these special enrollment periods were properly determined.

We considered the information technology system resources that would be needed to implement by January 1, 2017, advance availability of the special enrollment period for a permanent move and the special enrollment period for loss of a dependent or no longer being considered a dependent due to divorce, legal separation, or death. We were concerned that the requirement to meet the January 1, 2017 deadline could cause needless expenditures of Exchange funds. In light of the competing financial and operational priorities of Exchanges, we believed it was contrary to the public interest to require that Exchanges meet the January 1, 2017 deadline. Therefore, we determined that there was a need to take immediate action to delete this future deadline, rather than engaging in notice and comment rulemaking on this change, in order to avoid the unnecessary expenditure of funds by Exchanges to comply with the January 1, 2017, implementation deadline. Therefore, effective May 11, 2016, we amended the following special enrollment period provisions to leave the implementation timeline for advanced availability at the discretion of the Exchange.

Section 155.420(c)(2) provides for advanced availability of the special enrollment period for a qualified individual or enrollee, or his or her dependent who gains access to new QHPs as a result of a permanent move as described in paragraph (d)(7) of this section, meaning that a qualified individual or enrollee, or his or her dependent, has 60 days before or after the triggering event (the permanent move) to select a QHP. Paragraph (c)(2) also provides that this advanced availability be available by January 1, 2017 or earlier, at the option of the Exchange. We amended this paragraph, effective May 11, 2016, to remove the requirement for Exchanges to offer advanced availability of the permanent move special enrollment period by January 1, 2017, which kept this provision at the option of the Exchange.

We also amended paragraph (d)(2)(ii), which provides for a special enrollment period for an enrollee who loses a dependent or is no longer considered a dependent due to divorce, legal separation, or death, to remove the requirement that Exchanges offer this special enrollment period by January 1, 2017. We noted that, if a loss of a dependent or no longer being considered a dependent due to divorce, legal separation, or death results in a loss of minimum essential coverage, such individuals may qualify for the special enrollment period for loss of minimum essential coverage. Effective May 11, 2016, implementation of this provision remains at the option of the Exchange.

We noted that certain special enrollment periods in § 155.420 are incorporated into the guaranteed availability regulations at § 147.104(b) and apply to issuers offering non-grandfathered individual coverage through or outside of the Exchange, and incorporated in the SHOP regulations at § 155.725(j) and § 156.285(b) and applied to QHP coverage offered through the SHOPs. The changes made to special enrollment periods in this rule therefore applied to the guaranteed availability and SHOP regulations, to the extent applicable.

In this rule, we are finalizing the interim final rule with comment and the corresponding provisions as proposed.

Comment: Commenters were divided in their support for or opposition to the addition of a prior minimum essential coverage requirement to the special enrollment period for a permanent move at § 155.420(d)(7). Those who supported this amendment believe that this addition will help eliminate misuse and abuse of this special enrollment period by preventing consumers from moving and enrolling in coverage only when they have health coverage needs. One commenter recommended that the 60 day prior minimum essential coverage requirement be reduced to 30 days.

Those who opposed this amendment expressed concerns about adding additional barriers to coverage for disadvantaged populations, especially migrant workers who often cross State lines for work, individuals who previously lived in rural areas with unaffordable coverage and have moved to a more competitive service area where affordable health coverage is now available, and family caregivers who have left the workforce to care for a sick relative. Commenters also expressed concern that making it more difficult to qualify for special enrollment periods will have a negative impact on risk pools and will further decrease already low special enrollment period enrollment rates, citing a recent study that showed that five percent of consumers who could qualify for special enrollment periods actually utilized a special enrollment period to enroll in 2015 coverage.[68] Commenters raised concern that by amending this special

[68] Dorn, Stan. ''Helping Special Enrollment Periods Work under the Affordable Care Act.'' The Urban Institute. June 23, 2016. Accessed at *http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000834-Helping-Special-Enrollment-Periods-Work-Under-the-Affordable-Care-Act.pdf* on June 29, 2016.

enrollment period, HHS is restricting access to a special enrollment period prior to sharing evidence of misuse or abuse.

Response: We agree with commenters that adding a prior coverage requirement to the special enrollment period for a permanent move protects against misuse and abuse of this special enrollment period by preventing consumers who are moving for the sole purpose of obtaining medical treatment from newly enrolling in a QHP. We also believe that this requirement will encourage consumers to remain in coverage, even if they are anticipating a move in the future.

However, we appreciate the concerns raised by commenters about legitimate reasons consumers may experience a gap in coverage and will no longer be able to qualify for this special enrollment period. Migrant workers who live and work in one service area, but maintain a home in another service area where they live other than during the seasonal employment, can establish residency in either or both service areas to enroll in QHP coverage. We encourage commenters to review the FAQs on the Marketplace Residency Requirement and the Special Enrollment Period due to a Permanent Move, published on January 19, 2016 for more information on this topic.[69] We will also continue to monitor utilization of this special enrollment period so that we can evaluate whether consumers are being prevented from enrolling in coverage for legitimate reasons that are beyond their control due to this change to our regulation.

Comment: Commenters were opposed to the elimination of the January 1, 2017 implementation deadline for offering advance availability of the special enrollment period for a permanent move at § 155.420(c)(2) and for implementing the special enrollment period for enrollees for loss of a dependent or no longer being considered a dependent due to divorce, legal separation, or death at § 155.420(d)(2)(ii). Commenters expressed concerns that delaying implementation of advance availability of the special enrollment period for permanent move may lead to an unavoidable gap in coverage for someone who moves during the coverage year due to the fact that consumers can currently only qualify for this special enrollment period after they have moved and the associated coverage effective date is always prospective. This can result in negative health outcomes, especially for consumers with chronic conditions. Commenters pointed out that Medicare currently offers advance availability for their special enrollment period for a permanent move. In addition, commenters expressed concerns that consumers' health coverage needs may likely change after a divorce, legal separation, or death, when consumers' household composition has changed and especially if a dependent with greater health care needs is no longer part of the household. Commenters suggested that, since this special enrollment period would only be available to current QHP enrollees, HHS will be able to implement it in a way that prevents misuse or abuse.

Lastly, one commenter recommended that HHS update, rather than eliminate, implementation deadlines for these provisions to minimize variation across States in terms of their availability. Failure to do so could lead to confusion to both enrollees and issuers about what special enrollment periods are available.

Response: We appreciate the concerns raised by commenters about the elimination of the implementation deadlines for both offering advance availability for the special enrollment period for a permanent move and for the special enrollment period for enrollees who have lost a dependent or are no longer considered a dependent due to divorce, legal separation, or death. As mentioned above, we are conducting an assessment of QHP enrollments that were made through special enrollment periods in the FFEs, and, given the information technology system requirements necessary to implement these provisions by January 1, 2017, we were concerned that the requirement to meet the January 1, 2017, deadline could cause needless expenditures of Exchange funds.

Comment: One commenter suggested HHS clarify how the special enrollment period provisions in the Exchange regulations at § 155.420 apply in the individual market outside the Exchange.

Response: With the exception of certain triggering events specified in § 147.104(b)(2), which are only relevant to enrollment in a QHP through the Exchange, the same special enrollment periods (also referred to as limited open enrollment periods) apply throughout the individual market, both inside and outside of the Exchange.

Under the guaranteed availability and Exchange provisions at §§ 147.104 and 155.420, respectively, when an individual (and, where specified, his or her dependent) experiences an event that triggers a special enrollment period at § 155.420, the individual has a right to enroll in or change QHPs offered through the Exchange, and except for certain specified triggering events, also has the opportunity to purchase or enroll in any non-grandfathered individual health insurance coverage offered outside the Exchange pursuant to § 147.104(b)(2). These special enrollment rights apply to any individual described in the regulations and are not limited solely to individuals who experience a triggering event while enrolled through the Exchange.

To provide greater clarity about how these provisions apply in the context of the individual market outside the Exchange, we are adding a sentence in § 147.104(b)(2) to specify that in applying special enrollment periods under the marketwide regulations, a reference in § 155.420 to a ''QHP'' is deemed to refer to a plan, a reference to ''the Exchange'' is deemed to refer to the applicable State authority, and a reference to a ''qualified individual'' is deemed to refer to an individual in the individual market.

Furthermore, consistent with similar exclusions under the marketwide regulations for Exchange-specific special enrollment periods, we are also clarifying that the triggering event described at § 155.420(d)(6) will not create a special enrollment period to enroll outside the Exchange to the extent it concerns an individual who becomes newly eligible for APTC or who has a change in eligibility for cost-sharing reductions other than a total elimination of eligibility, since financial assistance is only available for coverage purchased through an Exchange. Individuals who become newly ineligible for APTC or who have a change in eligibility for cost-sharing reductions as described in paragraphs (d)(6)(i) and (ii) will continue to qualify for a special enrollment period to enroll in individual market coverage through or outside of an Exchange.

We intend to monitor the application of these special enrollment period rules and may provide additional guidance in the future to ensure that individuals eligible for special enrollment periods receive the protections they are entitled to under the law.

2. CO–OP Program

Subpart F of part 156 of title 45 of the Code of Federal Regulations sets forth the standards applicable to the CO–OP Program. In the interim final rule with comment, we made a number of changes to the rules governing CO–OPs to provide additional flexibility for CO–OP

[69] U.S. Department of Health and Human Services, ''FAQs on the Marketplace Residency Requirement and the Special Enrollment Period due to a Permanent Move'' January 19, 2016. Available at: *https://www.regtap.info/uploads/library/ENR_FAQ_ResidencyPermanentMove_SEP_5CR_011916.pdf.*

issuers to enter into strategic financial transactions with other entities. Given the financial challenges faced by some CO–OPs and the lack of opportunity for further Federal funding, these changes were implemented to improve their capital position and to further the ability of the program to facilitate the offering of competitive, high-quality health insurance on Exchanges. Furthermore, these amendments were made in response to CO–OPs' requests for maximum flexibility in governance requirements to assist their efforts to enter into new, beneficial business relationships. We received five comments in response to the changes to CO–OP regulations set forth in the interim final rule with comment. Two of the five were not applicable to the changes in the interim final rule with comment and therefore are not addressed below.

a. Definitions (§ 156.505)

In the interim final rule with comment, we amended the definitions of ''pre-existing issuer'' and ''representative'' to permit CO–OPs increased flexibility to explore and advance business opportunities, and increase the pool of eligible candidates for their boards of directors. The definition of the term ''pre-existing issuer'' was amended to limit the definition to State-licensed health insurance issuers that competed in the individual or small group commercial health insurance markets on July 16, 2009, as required by section 1322(c)(2)(A) of the Affordable Care Act). The definition of the term ''representative'' was revised to mean an officer, director, or trustee of an organization, or group of organizations; or a senior executive or high level representative of the Federal government, or a State or local government or a sub-unit thereof.

The amended definitions expand the universe of individuals eligible for membership on a CO–OP board of directors, while ensuring that appropriate standards remain in place to protect against conflicts of interest and insurance industry involvement and interference. We are finalizing these provisions as implemented in the interim final rule with comment.

Comment: One commenter recommended amending the revised definition of representative by adding the word ''current'' before ''officer, director, or trustee of an organization, or group of organizations; or a senior executive or high-level representative''. The commenter stated that this change would make clear that former or retired officers, directors, trustees, or senior executives are not included in the exclusion.

Response: We agree that former or retired officers, directors, trustees, or senior executives should not be included in the definition of ''representative.'' However, we do not believe that the requested change is necessary. The amended definition of the term ''representative'' in the interim final rule with comment currently does not include former or retired officers, directors, trustees, or senior executives. Therefore, we are finalizing the definition of ''representative'' as implemented in the interim final rule with comment.

b. CO–OP Standards (§ 156.515)

Under § 156.515(b)(1), a CO–OP must be governed by a board of directors, with all of its directors elected by a majority vote of a quorum of the CO–OP's members that are age 18 or older, and the voting directors on the board must be members of the CO–OP. In the interim final rule with comment, we amended these standards to require that only a majority of directors be elected by the members and to remove the requirement that a majority of voting directors be members of the CO–OP. This revision allows entities offering loans, investments, and services to participate on the board of directors, as is common practice in the private sector, while maintaining the overall control of the board by the members of the CO–OP. We made this change in response to program experience demonstrating that the inability to grant designated board positions to prospective partners or investors may create obstacles to potentially favorable business arrangements for CO–OPs. This amendment also provides opportunities for CO–OPs to enlist qualified individuals from outside their membership to participate in board governance.

We also revised § 156.515(b)(2)(i) to comport with the changes in the types of representatives permitted to sit on the board of directors while still retaining ethical, conflict of interest, and disclosure standards. Section 156.515(b)(2)(ii) was revised to provide that each director has one vote. Section 156.515(b)(2)(iv), which provided that positions on the board designated for individuals with specialized expertise, experience, or affiliation cannot constitute a majority of the board, was removed and reserved. Section 156.515(b)(2)(v) was revised to permit representatives of State or local governments or organizations described in § 156.510(b)(1)(i) to participate on CO–OP boards of directors, provided the CO–OP does not issue policies in the State in which the government representative serves or the organization operates. These amendments are intended to provide CO–OPs with increased flexibility regarding board membership, as well as to increase business opportunities for CO–OPs. We note that any fiduciary duties that exist under State law would continue to apply for all members of a CO–OP's board.

We also noted that the requirements of § 156.515(c)(1) requiring that at least two-thirds of the policies issued by a CO–OP must be QHPs issued in the individual and small group markets, have at times posed an obstacle to potential strategic partners of CO–OPs. In the interim final rule with comment, HHS clarified that, if a CO–OP fails to meet the standard in a given year, it would not necessarily require immediate loan repayment as long as the CO–OP is in compliance with § 156.515(c)(2); has a specific plan and timetable to meet the two-thirds requirement, and acts with demonstrable diligence and good faith to meet the standard. A CO–OP must ultimately come back into compliance with the two-thirds standard in future years. We are finalizing these provisions as implemented in the interim final rule with comment.

Comment: One commenter objected to the new provision at 45 CFR 156.515(b)(1) to the effect that no board members must be CO–OP members. Another commenter objected to the requirement that only a majority of directors be elected by the CO–OP's members. Both commenters indicated that these changes would compromise the mandate that CO–OPs be member run and consumer-focused.

Response: CO–OPs are obligated to be, and remain, consumer-operated and consumer-focused entities. These broad principles are overarching, ongoing obligations of all CO–OP health plans. More generally, both principles are not specifically defined and admit wide application by each CO–OP under various circumstances, under its obligations to the public as a private, non-profit company that has assumed the task of fulfilling the goals of the CO–OP program. For these reasons, HHS believes the changes to the governance requirements implemented in the interim final rule with comment will assist CO–OPs in their efforts to remain viable over time, while maintaining their mission as consumer focused organizations.

Comment: One commenter voiced support for the revisions HHS made to the definition of a prohibited

representative of State government or a preexisting issuer at 45 CFR 515.505, and expressed that the amendment will assist CO–OPs in their efforts to attract board members with sufficient expertise. The commenter also supported the amendments to § 156.515(b)(1) that limit the prohibition against representatives of preexisting issuers from sitting on a CO–OP board to such issuers that do business in the individual and small group health insurance markets. The commenter indicated the amendment will help CO–OPs attract new business alliances and enter into new lines of business that could promote overall business objectives.

Response: We appreciate and agree with the commenter and thus, are finalizing the changes.

c. Loan Terms (§ 156.520)

Under § 156.520(f), a CO–OP may not convert or sell to a for-profit or non-consumer operated entity, or undertake a transaction that would result in the CO–OP implementing a governance structure that does not meet our regulatory standards. In the preamble of the interim final rule we provided clarification regarding whether this provision prohibits the sale or conversion of policies to a non-CO–OP issuer in connection with the wind-down of a CO–OP. We clarified that if a CO–OP is out of compliance with this provision, the CO–OP will cease to be a qualified non-profit health insurance issuer, and certain rights under the CO–OP Loan Agreement will become available to HHS, including the right to accelerate repayment of the loans or terminate the Loan Agreement itself. In addition, we indicated that we recognize that a CO–OP could elect to enter into such a transaction in the appropriate circumstances, to preserve coverage for enrollees upon the insolvency of the issuer, notwithstanding the aforementioned remedies. We did not implement any changes to the regulation and thus, are not finalizing any changes to this section. Accordingly, the preamble as published previously will also remain unchanged.

3. Risk Adjustment

Based on our experience operating the 2014 and 2015 benefit years risk adjustment program, HHS is aware that certain issuers, including some new, rapidly growing, and smaller issuers, owed substantial risk adjustment charges that they did not anticipate. HHS has had, and continues to have discussions with issuers and State regulators on ways to help ease issuers' transition to the new health insurance markets and the effects of unanticipated risk adjustment charge amounts. HHS believes that a robust risk adjustment program that addresses new market dynamics due to rating reforms and guaranteed issue requirements is critical to the proper functioning of these new markets. However, we are sympathetic to these concerns and recognize that States are the primary regulators of their insurance markets. As such, we encouraged, and continue to encourage States to examine whether any local approaches, under State legal authority, are warranted to help ease this transition to new health insurance markets.

In addition to actively engaging in conversations with States, we are updating the risk adjustment methodology as described elsewhere in this final rule for the 2017 and 2018 benefit years to address some of the foregoing issues.

Comment: One commenter requested that HHS improve the risk adjustment program. This commenter supported many of the changes discussed in the ''March 31, 2016, HHS-Operated Risk Adjustment Methodology Meeting: Discussion Paper'' (White Paper),[70] especially the use of prescription drugs to help identify missing diagnoses, and transitioning from a concurrent model to a prospective risk adjustment model.

Response: In the HHS Notice of Benefit and Payment Parameters for 2018 Proposed Rule (81 FR 61456)[71] (September 6, 2016), consistent with our discussion in the White Paper, HHS proposed a number of updates to the risk adjustment model. We respond to comments about proposed updates to the risk adjustment methodology elsewhere in this final rule.

Comment: One commenter commented that States should explore State-level solutions, including State wrap-around risk adjustment, reinsurance, and risk corridors programs. This commenter suggested that States should also evaluate their role in approving plan pricing, ensuring that issuers are accurately accounting for risk adjustment and permitting plans to make adjustments to rates that would enable them to mitigate predictable losses after rates have been set.

Response: We agree that States play a critical role in ensuring that State markets are competitive and sustainable.

Comment: One commenter disagreed with HHS's approach of encouraging States to explore local approaches to helping plans with this transition. The commenter stated that allowing States to modify the HHS-operated risk adjustment program after rates are filed would increase uncertainty in the market and further complicate pricing and financial forecasting, which are key to long-term stability. This commenter stated that State-level variations in an already complex program would increase complexity and administrative costs for issuers, suggesting that HHS consider policies and opportunities to help stabilize the individual market and avoid those that make it more difficult for the market to function well.

Another commenter requested that HHS clarify that the language in the interim final rule with comment does not encourage States to adopt proposals that would undermine the HHS-operated risk adjustment program. The commenter stated a concern with any proposed State solution that would limit risk adjustment transfers based on a risk corridor approach, which assumes that all issuers should end up with similar financial results after risk adjustment. This commenter requested HHS to clarify that any proposal to exempt, limit, or artificially cap risk adjustment payments would undermine the purpose of the HHS-operated risk adjustment program, and could hurt consumers and the market as a whole.

Response: We reiterate that States in which HHS is operating its risk adjustment methodology are not permitted to modify the methodology, but that States may take temporary, reasonable measures under State authority to mitigate effects under their own authority.

IV. Waiver of Delay in Effective Date

We ordinarily provide a 60-day delay in the effective date of the provisions of a rule in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(d)), which requires a 30-day delayed effective date, and the Congressional Review Act (5 U.S.C. 801(a)(3)), which requires a 60-day delayed effective date for major rules. However, we can waive the delay in the effective date if the Secretary finds, for good cause, that the delay is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons in the rule issued (5 U.S.C. 553(d)(3); 5 U.S.C. 808(2)).

[70] March 31, 2016, HHS-Operated Risk Adjustment Methodology Meeting: Discussion Paper. March 24, 2016. Available at *https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/RA-March-31-White-Paper-032416.pdf.*

[71] ''HHS Notice of Benefit and Payment Parameters for 2018'' available at *https://www.gpo.gov/fdsys/pkg/FR-2016-09-06/pdf/2016-20896.pdf.*

We have determined that it is appropriate to issue this regulation with an effective date 30 days from the date of display in the **Federal Register**. HHS has determined that delaying action on the provisions in this rule is contrary to the public interest. Prompt action is necessary to provide for certain critical changes to our programs for 2017—including adjustments to incorporate partial year enrollment duration factors into risk adjustment; MLR policies allowing deferred reporting of new policies with a full 12 months of experience and providing the option to limit rebate liability; risk adjustment data validation policies to apply the default error rate to new entrants for 2016 risk adjustment data validation; a policy to allocate a portion of FFE user fee eligible costs directly to outreach and education; policies around CSR reconciliation appeals and discrepancies for 2016 benefit year; a policy allowing issuers to implement a reasonable extension of the binder payment deadlines when an issuer is experiencing billing or enrollment problems due to high volume or technical errors; a policy regarding termination of Exchange enrollment or coverage to require that issuers demonstrate the rescission is appropriate; policies permitting Exchanges to recalculate APTC; policies allowing an Exchange appeals entity to utilize a secure and expedient paper-based appeals processes; and language access policies allowing Exchanges, QHP issuers, and Web-brokers to more efficiently provide important information to LEP consumers. HHS has determined that implementation of these changes beginning early in 2017 is important for issuer confidence. Issuer confidence is necessary to maintain robust issuer participation in and competition on the Exchanges and to encourage affordability of coverage for enrollees and the continuity of care that is supported by the continued availability of plans on the Exchanges. We believe that the later effective date for the 2017 Payment Notice added to issuers' uncertainty in preparing their products for the 2017 benefit year, which may have led to uncertainty in the market and may have resulted in premium increases. We are seeking a shorter effective date in order to allow issuers ample time to prepare for the 2018 benefit year and help stabilize the Exchanges for issuers and consumers. We also believe consumers' confidence in the Exchanges is especially important this time of year when they are making enrollment decisions, with Open Enrollment in the individual market ongoing and the Medicare General Enrollment period about to begin on January 1. Stakeholders, including States and issuers, have also requested that this rule become effective earlier in order to establish rates for 2018 in a timely fashion. Therefore, a 60-day delay in the effective date would be contrary to the public interest. We have therefore determined that the rule will become effective on January 17, 2017.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. This final rule contains information collection requirements (ICRs) that are subject to review by OMB. A description of these provisions is given in the following paragraphs with an estimate of the annual burden, summarized in Table 14. In the September 6, 2016 (81 FR 61456) proposed rule, we requested public comment on each of the following collection of information requirements. The comments received and our responses to them are discussed below. The May 11, 2016 interim final rule with comment (81 FR 29146) did not impose information collection requirements.

A. ICRs Regarding Upload of Risk Adjustment Data (§ 153.610)

Under the HHS-operated risk adjustment program, HHS uses a distributed data collection approach for enrollee-level enrollment, claims, and encounter data that reside on an issuer's dedicated data environment. Under § 153.710(a), an issuer of a risk adjustment covered plan in a State where HHS is operating the risk adjustment or reinsurance program on behalf of the State, as applicable, must provide HHS, through the dedicated data environment, access to enrollee-level plan enrollment data, enrollee claims data, and enrollee encounter data, as specified by HHS. Under § 153.610(a) as finalized, an issuer must submit or make accessible all required risk adjustment data for its risk adjustment covered plans in accordance with the risk adjustment data collection approach established by the State, or by HHS on behalf of the State. In order to collect enrollee-level data that will be used to recalibrate the HHS risk adjustment models, HHS will send a command to all issuers' EDGE servers that issuers must execute, which will provide HHS with a dataset that does not identify the EDGE server, plan, issuer, geographic rating area, State, or enrollee. Because this EDGE report requires no new data elements and only requires an issuer to execute the command, we do not believe this provision imposes additional burden on issuers of risk adjustment covered plans described under the information collection currently approved under OMB Control Number 0938–1155. We note, however, that in the future, HHS intends to add the applicable data elements to the 2018 benefit year EDGE server collection. If HHS were to pursue that option, we would revise the information collection currently approved under OMB Control Number 0938–1155 to reflect any extra burden.

B. ICRs Regarding Data Validation Requirements When HHS Operates Risk Adjustment (§ 153.630)

Under § 153.630(b), an issuer that offers at least one risk adjustment covered plan in a State where HHS is operating risk adjustment on behalf of the State for the applicable benefit year must have an initial validation audit performed on its risk adjustment data. The cost associated with this requirement is the issuer's time and effort to provide HHS with source claims, records, and enrollment information to validate enrollee demographic information for initial and second validation audits, and the issuer's cost to employ an independent auditor to perform the initial validation audit on a statistically valid sample of enrollees. We estimate that each issuer sample will consist of approximately 200 enrollees, and we stated in the proposed rule that this audit would affect approximately 825 issuers. Given the finalization of a materiality threshold beginning for 2017 benefit year risk adjustment validation and the implementation of pharmacy claim validation beginning for the 2018 benefit year risk adjustment data validation, we are revising our total number of issuers affected per year. We estimate that approximately 399 issuers have total premiums of $15 million or less, and that approximately one-third of these issuers would be subject to an initial validation audit each year. Therefore, we revise the total number of issuers affected annually for this provision from 825 issuers to 559 issuers. Under this final rule, beginning with risk adjustment data validation for the 2018 benefit year, HHS will require the review of paid pharmacy claims for all sample enrollees in the initial validation audit. Based on 2015 EDGE reinsurance data, and after a review of

risk adjustment data validation sampling strata, we are revising our estimate. We now estimate that, because two-thirds of risk adjustment data validation initial validation audit sample enrollees will be enrollees with HCCs, these enrollees are likely to have more pharmacy claims than on average in the EDGE data. As such, we estimate these enrollees with HCCs will have on average, 24 pharmacy claims each. We estimate the remaining half of the one-third of sample enrollees without HCCs will have on average approximately 4 pharmacy claims each, with the other half of the one-third sample enrollees having no pharmacy claims. Therefore, for 133 enrollees with 24 pharmacy claims each, 34 enrollees with 4 pharmacy claims each, and 33 enrollees without pharmacy claims, we would estimate 3,328 pharmacy claims per issuer, or on average, 17 pharmacy claims per enrollee within a sample of 200 enrollees. We continue to believe it would take approximately 5 minutes per pharmacy claim to validate, but are revising our estimate per enrollee to require 85 minutes for an auditor (at a labor cost of $72 per hour) and would cost approximately $102 per enrollee to validate paid pharmacy claims. We assume that an initial validation audit would be performed on 111,800 enrollees, with an average of 17 pharmacy claims each. Based on the information above, we estimate that the total additional burden per issuer for initial validation auditors to review and validate paid pharmacy claims would be approximately 283 hours (283 hours and 20 minutes) and cost approximately $20,400. Therefore, for 559 issuers, the total annual burden of conducting initial validation audits is approximately 158,383 hours with an equivalent cost of approximately $11,403,600. We will revise the information collection currently approved under OMB Control Number 0938–1155 with an October 31, 2017 expiration date to account for this additional burden.

Comment: A commenter asked HHS to present statistical data based on program experience rather than ''beliefs'' as a basis for regulatory cost analysis, and requested HHS to provide the basis for its ''belief'' that half of all enrollees will have pharmacy claims and, of these, HHS expects six pharmacy claims per enrollee. The commenter also inquired how HHS determined the audit would be performed on 165,000 enrollees and take 30 minutes per enrollee.

Response: HHS based its initial estimate of pharmacy claims for sample enrollees on 2015 EDGE claims data submitted by issuers for reinsurance. We estimated initial validation audits would be performed on 200 enrollees per issuer, and multiplied that by 825 issuers to arrive at the total enrollees affected by the audit. Our estimate of the additional time it would take to examine pharmacy claims is consistent with previous estimates of the burden on issuers to submit EDGE data. However, upon further examination, because the risk adjustment data validation sample is weighted toward enrollees with HCCs, who likely have disproportionately high pharmacy claims, we reviewed and increased the burden, but also reduced the number of issuers affected annually, due to the finalization of the materiality threshold. The new burden estimated above in this ICR is based on an initial validation sample that includes two-thirds of the sample of 200 enrollees as enrollees with HCCs, and the remaining one-third including enrollees without HCCs, with and without pharmacy claims, and approximately 559 issuers being subject to the initial validation audit annually.

C. ICR Regarding the Interim and Final Discrepancy Reporting Processes for Risk Adjustment Data Validation When HHS Operates Risk Adjustment (§ 153.630(d))

This final rule provides that under § 153.630(d)(1), in the manner set forth by HHS, an issuer must confirm the sample or file a discrepancy report within 15 calendar days to dispute the HHS risk adjustment data validation sample set forth by HHS in the HHS–RADV Final Reports. As finalized in § 153.630(d)(2), in the manner set forth by HHS, an issuer may file a discrepancy report within 30 calendar days to dispute the findings of a second validation audit or the calculation of a risk score error rate.

We estimate that 825 issuers of risk adjustment covered plans are subject to this requirement, and that issuers will review the HHS-risk adjustment data validation final reports, specifically, the initial validation audit sample set for the interim discrepancy reporting process. For the final discrepancy reporting process, as finalized in § 153.630(d)(2), issuers will review the results of the second validation audit and the calculation of a risk score error rate. On average, we estimate that it would take a business operations specialist (at an hourly labor cost of $78) approximately 2 hours to respond to an interim report and 6 hours to respond to the interim and final discrepancy reporting process. The total burden for each issuer would be 8 hours at a cost of $624. Therefore, we estimate an aggregate annual burden of 6,600 hours and $514,800 for 825 issuers as a result of these requirements.

Comment: A commenter requested the basis for estimating a response time of 8 hours and inquired whether HHS considered alternatives to reduce the burden of compliance.

Response: HHS's estimate of response time is based on experience with previous discrepancy reporting processes for other financial programs, such as risk adjustment and reinsurance, *see* § 153.710(d). The burden estimates for the risk adjustment and reinsurance discrepancy reporting processes were subject to notice and comment rulemaking in the 2015 Payment Notice. Additionally, we believe the burden on issuers will be reduced over time, as the risk adjustment data validation program matures and issuers gain experience with the process.

D. ICR Regarding Standardized Options in SBE–FPs (§ 155.20)

In § 155.20, we are finalizing that an SBE–FP must notify HHS if it wants HHS-designed standardized options to receive differential display, by a date to be specified in guidance. We anticipate that fewer than 10 SBE–FPs will submit this information to HHS annually. Under 5 CFR 1320.3(c)(4), this ICR is not subject to the PRA as it will affect fewer than 10 entities in a 12-month period.

E. ICR Regarding Differential Display of Standardized Options on the Web Sites of Agents and Brokers (§ 155.220) and QHP Issuers (§ 156.265)

We are finalizing requirements that Web-brokers and QHP issuers that utilize the direct enrollment pathway to differentially display standardized options in the 2018 plan year and beyond, consistent with the approach adopted by HHS for display on the Exchange Web site, unless HHS approved a deviation. This policy will require direct enrollment entities to prominently display standardized options in a manner that makes them clear to consumers. We estimate that a total of 160 Web-brokers and QHP issuers participate in the FFEs and SBE–FPs and will be required to comply with the standard. We estimate it will take a mid-level software developer (at a rate of $96.82 per hour) approximately 2 hours annually to develop a differential display for standardized options. We estimate an annual cost burden of approximately $193.64 per direct enrollment entity. The total annual burden will be 320 hours with an

equivalent cost of approximately $30,982.40.

We anticipate that fewer than 10 Web-brokers and issuers will submit a request to deviate from the manner adopted by HHS for display on *HealthCare.gov* and from the standards defined by HHS. Under 5 CFR 1320.3(c)(4), this ICR is not subject to the PRA as it will affect fewer than 10 entities in a 12-month period.

F. ICR Regarding Ability of States To Permit Agents and Brokers To Assist Qualified Individuals, Qualified Employers, or Qualified Employees Enrolling in QHPs (§ 155.220)

We are finalizing a number of requirements for Web-brokers related to the direct enrollment process such as prominently displaying information regarding consumers' eligibility for APTC, allowing consumers to make attestations regarding APTC, enhanced oversight obligations for downstream access to a Web-broker's non-Exchange Web site, expanded standards of conduct pertaining to the use of direct enrollment partner Web sites that could mislead consumers into believing they are visiting *HealthCare.gov,* and demonstrating operational readiness prior to the use of a non-Exchange Web site to complete the QHP selection for Exchange enrollments. At §§ 156.265 and 156.1230, we finalize a number of parallel provisions for issuers using the direct enrollment channel. We will provide additional technical details regarding compliance with the specific requirements under these rules in guidance in the future. At that time, we will estimate the burden associated with these requirements, solicit public comment, and request OMB approval in accordance with the PRA, as may be necessary.

G. ICRs Regarding Standards for HHS-Approved Vendors To Perform Audits of Agents and Brokers Participating in Direct Enrollment (§ 155.221)

We are finalizing requirements related to the application, approval, monitoring and appeals process for vendors to perform audits of agents and brokers participating in direct enrollment. We will provide additional technical details regarding these requirements in guidance in the future. At that time, we will estimate the burden associated with these requirements, solicit public comment, and request OMB approval in accordance with the PRA, as may be necessary.

H. ICR Regarding Eligibility Standards (§ 155.305)

We finalize amendments related to compliance with the income tax filing requirement in § 155.305(f)(4). Under paragraph (f)(4)(ii), the Exchange may determine a tax filer eligible for APTC if other information available to the Exchange indicates that a tax filer or his or her spouse complied with the requirement specified in paragraph (f)(4)(i). The Exchange may obtain such other information by giving Exchange consumers the opportunity to attest to having filed their Federal income taxes and reconciled APTC or to submit documentary proof of filing. We will provide additional technical details about these options in future guidance. At that time, we will estimate the burden associated with these requirements, solicit public comment, and request OMB approval in accordance with the PRA, as may be necessary.

I. ICR Regarding Eligibility Redeterminations (§ 155.330)

We finalize amendments to permit an Exchange to choose among three alternatives when the Exchange identifies updated information regarding compliance with the income tax filing and reconciliation requirement under § 155.305. An Exchange may either follow the process described in paragraph (e)(2)(i), a process specified by the Secretary in guidance, or an alternative process proposed by the Exchange and approved by the Secretary. HHS anticipates that it will require Exchanges requesting approval for an alternative process to submit a brief description of the alternative process, and a justification for how the process satisfies the approval criteria outlined in § 155.330(e)(2)(iii)(C). Given the availability of two alternative processes, we anticipate that fewer than 10 Exchanges will submit a proposal. Therefore, under 5 CFR 1320.3(c)(4), this ICR is not subject to the PRA as it will affect fewer than 10 entities in a 12-month period.

We also finalize amendments to permit the Exchange to recalculate APTC using the procedure described in § 155.330(g)(1) or an alternate procedure approved by HHS. HHS anticipates that it will require participating Exchanges to submit a brief description of the alternate procedure and the extent to which the alternate procedure will protect tax filers from an excess APTC repayment. Here too, we anticipate that fewer than 10 Exchanges will submit a proposal. Under 5 CFR 1320.3(c)(4), this ICR is not subject to the PRA as it will affect fewer than 10 entities in a 12-month period.

J. ICR Regarding Termination of Exchange Enrollment or Coverage (§ 155.430(b)(2)(iii))

We finalize our amendment of § 155.430(b)(2)(iii) to clarify that when an issuer seeks termination of a QHP purchased on an Exchange via a rescission under § 147.128, it must first demonstrate, to the reasonable satisfaction of the Exchange, that the basis for the rescission is appropriate, if the Exchange requires such a demonstration. This will require the issuer to provide information related to the termination to the Exchange. We do not anticipate that all Exchanges will subject issuers to this requirement. We anticipate that fewer than 10 issuers will be subject to this requirement annually. Under 5 CFR 1320.3(c)(4), this ICR is not subject to the PRA as it will affect fewer than 10 entities in a 12-month period.

K. ICR Regarding QHP Request for Reconsideration (§ 155.1090)

We finalize a provision to add § 155.1090 to create a process for an issuer that has applied to an FFE for certification of QHPs and has been denied certification to request reconsideration. We anticipate that fewer than 10 issuers per year will request reconsideration. Under 5 CFR 1320.3(c)(4), this ICR is not subject to the PRA as it will affect fewer than 10 entities in a 12-month period.

L. ICR Regarding Notification by Issuers Denied Certification (§ 156.290)

In § 156.290, we established a requirement that QHP issuers provide a notification to enrollees when a plan is denied certification for a subsequent, consecutive certification cycle. We anticipate that fewer than 10 issuers will be subject to this requirement annually. Under 5 CFR 1320.3(c)(4), this ICR is not subject to the PRA as it will affect fewer than 10 entities in a 12-month period.

M. ICR Regarding the Discrepancy Reporting Processes for the Reconciliation of the Cost-Sharing Reduction Portion of Advance Payments (§ 156.430(h))

Under § 156.430(h)(1) as finalized in this rule, if an issuer files a discrepancy report to dispute the notification of the amount of reconciliation of the cost-sharing reduction portion of advance payments, it must file the discrepancy report within 30 calendar days of notification of the amount of reconciliation of the cost-sharing

reduction portion of advance payments as described in § 156.430(e), in the manner set forth by HHS.

We estimate that of approximately 360 QHP issuers that submit cost-sharing reduction reconciliation data, less than one third will file a discrepancy report to dispute the notification of the amount of reconciliation of the cost-sharing reduction portion of advance payments for a benefit year. Issuers will review the notification of the amount of reconciliation of the cost-sharing reduction portion of advance payments for this discrepancy reporting process. On average, we estimate that it will take a business operations specialist (at an hourly labor cost of $78) approximately 6 hours to review the requirements of the discrepancy reporting process, to determine whether the issuer should submit a discrepancy report, to categorize the discrepancy, and to write a description of the discrepancy for submission to HHS. Additionally, we estimate that it will take a computer programmer (at an hourly labor cost of approximately $78) approximately 12 hours to develop the pipe-delimited file for reporting the discrepancy, based on the technical specifications published by HHS, and to submit the discrepancy file to HHS through the electronic file transfer system. Therefore, we estimate that the total burden for each issuer is approximately 18 hours with an equivalent cost of $1,404. Assuming that no more than 120 issuers will submit a discrepancy, we estimate a total aggregate annual burden of approximately 2,160 hours and $168,480 for issuers as a result of these requirements.

N. ICRs Regarding Administrative Appeals (§ 156.1220)

In § 156.1220, we previously established an administrative appeals process to address any issues or errors for APTC, advance payment and reconciliation of cost-sharing reductions, FFE user fees, and the premium stabilization programs, as well as any assessment of a default risk adjustment charge under § 153.740(b). This final rule revises § 156.1220 to also address administrative appeals relating to the risk adjustment data validation process.

Under § 153.630(d), an issuer may appeal the findings of a second validation audit or the calculation of a risk score error rate. This final rule amends § 153.630(d) by clarifying the process by which an issuer can appeal the findings of a second validation audit or the calculation of a risk score error rate. Under this final rule, issuers are required to use the administrative appeals process set forth in § 156.1220. Under § 156.1220(a), an issuer may file a request for reconsideration to contest a processing error by HHS, HHS's incorrect application of the relevant methodology, or HHS's mathematical error with respect to the findings of a second validation audit or the calculation of a risk score error rate.

While the hours involved in a request for reconsideration might vary, for purposes of this burden estimate, we estimate that it will take a business operations specialist 1 hour (at an hourly labor cost of $78) to make the comparison and submit a request for reconsideration to HHS. We estimate that 9 issuers, representing approximately 1 percent of issuers of risk adjustment covered plans, subject to risk adjustment data validation, will submit a request for reconsideration, resulting in a total aggregate annual burden of 9 hours with an equivalent cost of approximately $702.

O. ICR Regarding Medical Loss Ratio (§ 158.240)

We are amending § 158.240 to allow issuers the option of limiting the total rebate payable over the course of a 3-year period with respect to a given calendar year. We anticipate that implementing this provision will require minor changes to the MLR annual reporting form and we will revise the information collection currently approved under OMB Control Number 0938–1164 to reflect this provision, as may be necessary. However, we anticipate that only a small number of issuers will elect the option of additional reporting and we do not expect that this provision will increase the burden.

TABLE 14—ANNUAL REPORTING, RECORDKEEPING AND DISCLOSURE BURDEN

Regulation section	OMB control No.	Number of respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total cost ($)
§ 153.630 Risk Adjustment Data Validation	0938–1155	559	111,800	1.417	158,383	$72	$11,403,600	$11,403,600
§ 153.630(d) Discrepancy Reporting Processes for Risk Adjustment Data Validation.	0938–1155	825	1650	4	6,600	78	514,800	514,800
§§ 155.220, 156.265 Differential Display of Standardized Options.	NEW	160	160	2	320	96.82	30,982	30,982
§ 156.430(h) Discrepancy Reporting for cost-sharing reduction reconciliation.	0938–1266	120	1	18	2,160	78	168,480	168,480
§ 156.1220 Administrative Appeals	NEW	9	9	1	9	68	702	702
Total		1,114	113,620	26.417	167,472	392.82	12,118,564	12,118,564

Note: There are no capital/maintenance costs associated with the information collection requirements contained in this rule; therefore, we have removed the associated column from Table 14.

VI. Regulatory Impact Analysis

A. Statement of Need

This rule finalizes standards related to the risk adjustment program for the 2017 and 2018 benefit years, as well as certain modifications to the program that will protect against the potential effects of adverse selection. The Premium Stabilization Rule and previous payment notices provided detail on the implementation of this program, including the specific parameters for the 2014, 2015, 2016, and 2017 benefit years. This rule finalizes additional standards related to enrollment and eligibility, appeals, consumer assistance tools and programs of an Exchange, Web-brokers, cost-sharing parameters, qualified health plans, network adequacy, stand-alone dental plans, fair health insurance premiums, guaranteed availability and guaranteed renewability, the rate review program, the medical loss ratio program, the Small Business Health Options Program, FFE user fees, standardized options, and CO–OPs. These standards represent incremental amendments that are intended to continue to strengthen the Exchanges, improve the stability of the market, and enhance the choices available to consumers, while supporting consumers' ability to make informed choices when purchasing health insurance.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects ($100 million or more in any 1 year).

OMB has determined that the provisions in this final rule related to the proposed rule are ''economically significant'' within the meaning of section 3(f)(1) of Executive Order 12866, because it is likely to have an annual effect of $100 million in any 1 year. Accordingly, we have prepared an RIA that presents the costs and benefits of this final rule with respect to those provisions.

Although it is difficult to discuss the wide-ranging effects of these provisions in isolation, the overarching goal of the premium stabilization, market standards, and Exchange-related provisions and policies in the Affordable Care Act is to make affordable health insurance available to individuals who do not have access to affordable employer-sponsored coverage. The provisions within this final rule are integral to the goal of expanding coverage. For example, the risk adjustment program helps mitigate the effects of adverse risk selection and decrease the risk of financial loss that health insurance issuers might otherwise expect in 2018 and Exchange financial assistance helps low- and moderate-income consumers and American Indians/Alaska Natives purchase health insurance. The combined impacts of these provisions affect the private sector, issuers, and consumers, through increased access to health care services, decreased uncompensated care, lower premiums, and increased plan transparency. Through the reduction in financial uncertainty for issuers and increased affordability for consumers, these provisions are expected to increase access to affordable health coverage.

HHS anticipates that the provisions of this final rule will help further HHS's goal of ensuring that all consumers have access to quality, affordable health care and are able to make informed choices, that Exchanges operate smoothly, that the risk adjustment program works as intended, and that SHOPs are provided flexibility. Affected entities such as QHP issuers and Web-brokers will incur costs to comply with the finalized provisions. In accordance with Executive Order 12866, HHS believes that the benefits of this regulatory action justify the costs.

C. Impact Estimates of the Payment Notice Provisions and Accounting Table

In accordance with OMB Circular A–4, Table 15 below depicts an accounting statement summarizing HHS's assessment of the benefits, costs, and transfers associated with this regulatory action.

This final rule implements standards for programs that will have a number of effects, including providing consumers with affordable health insurance coverage, reducing the impact of adverse selection, and stabilizing premiums in the individual and small group health insurance markets and in an Exchange. We are unable to quantify certain benefits of this final rule—such as improved health outcomes and longevity due to continuous quality improvement, and increased insurance enrollment—and certain costs—such as the cost of providing additional medical services to newly-enrolled individuals. The effects in Table 15 reflect qualitative impacts and estimated direct monetary costs and transfers resulting from the provisions of this final rule. The annualized monetized costs described in Table 15 reflect direct administrative costs to health insurance issuers and Web-brokers as a result of the provisions, and include administrative costs related to requirements that are estimated in the Collection of Information section of this final rule. The annual monetized transfers described in Table 15 include costs associated with the risk adjustment user fee paid to HHS by issuers, and a decrease in MLR rebates to consumers. For 2018, we expect to collect a total of $40 million in risk adjustment user fees or $1.68 per enrollee per year from risk adjustment issuers, an increase from $24 million in benefit year 2017 when we established a $1.56 per-enrollee-per-year risk adjustment user fee amount. As in 2017, the risk adjustment user fee contract costs for 2018 include costs for risk adjustment data validation.

The annual monetized transfers described in Table 15 include a decrease in MLR rebates to consumers.

TABLE 15—ACCOUNTING TABLE

Benefits:

Qualitative:

- Increased enrollment in the individual market leading to improved access to health care for the previously uninsured, especially individuals with medical conditions, which will result in improved health and protection from the risk of catastrophic medical expenditures.
- Improved transparency and shopping experience for consumers due to new, updated standardized options and their differential display; and protections relating to direct enrollment.
- Ensure that newly qualified employees in FF–SHOPs and SBE–FPs using the Federal platform for SHOP functions have adequate time to make informed decisions regarding their coverage and minimize the risk of group health plans in FF–SHOPs and SBE–FPs using the Federal platform for SHOP functions exceeding the limitations on waiting period length.
- Ensure plan choice, allowing individuals to find coverage that fit their needs.

Costs:	Estimate (million)	Year dollar	Discount rate	Period covered
Annualized Monetized ($/year)	$12.12	2016	7	2017–2021
	12.12	2016	3	2017–2021

TABLE 15—ACCOUNTING TABLE—Continued

Costs reflect administrative costs incurred by issuers and Web-brokers to comply with provisions in this final rule.				
Transfers:	Estimate (million)	Year dollar	Discount rate	Period covered
Annualized Monetized ($/year)	$33.8	2016	7	2017–2021
	34.4	2016	3	2017–2021

• Transfers include risk adjustment user fees for 2018–2021 (assuming that they remain the same during this time period), which are transfers from health insurance issuers to the Federal government; and a reduction in total rebate payments by issuers which is a transfer from enrollees to shareholders or nonprofit stakeholders in individual, small and large group markets, resulting from adjustment in MLR methodology.

Qualitative:

• More precise risk adjustment charges and payments due to change in risk adjustment methodology.

This RIA expands upon the impact analyses of previous rules and utilizes the Congressional Budget Office's (CBO) analysis of the Affordable Care Act's impact on Federal spending, revenue collection, and insurance enrollment. The temporary risk corridors program and the transitional reinsurance program end after the 2016 benefit year. Therefore, the costs associated with those programs are not included in Tables 15 or 16 for fiscal years 2019–2021. Table 16 summarizes the effects of the risk adjustment program on the Federal budget from fiscal years 2017 through 2021, with the additional, societal effects of this final rule discussed in this RIA. We do not expect the provisions of this final rule to significantly alter CBO's estimates of the budget impact of the premium stabilization programs that are described in Table 16. We note that transfers associated with the risk adjustment and reinsurance programs were previously estimated in the Premium Stabilization Rule; therefore, to avoid double-counting, we do not include them in the accounting statement for this final rule (Table 16).

TABLE 16—ESTIMATED FEDERAL GOVERNMENT OUTLAYS AND RECEIPTS FOR THE RISK ADJUSTMENT, REINSURANCE, AND RISK CORRIDORS PROGRAMS FROM FISCAL YEAR 2017–2021

[billions of dollars]

Year	2017	2018	2019	2020	2021	2017–2021
Risk Adjustment, Reinsurance, and Risk Corridors Program Payments	10	8	8	9	9	44
Risk Adjustment, Reinsurance, and Risk Corridors Program Collections *	11	7	8	9	9	44

Note 1: Risk adjustment program payments and receipts lag by one quarter. Receipt will fully offset payments over time.

Note 2: The CBO score reflects an additional $2 million in collections in FY 2015 that are outlaid in the FY 2016–FY 2020 timeframe. CBO does not expect a shortfall in these programs.

Source: Congressional Budget Office. Federal Subsidies for Health Insurance Coverage for People Under Age 65: Tables From CBO's March 2016 Baseline *https://www.cbo.gov/sites/default/files/51298-2016-03-HealthInsurance.pdf.*

1. Fair Health Insurance Premiums

The final rule creates multiple child age bands rather than a single age band for individuals age 0 through 20. Establishing single-year age bands starting at age 15 will result in small annual increases in premiums attributable to age for children age 15 to 20, which will help mitigate large premium increases attributable to age due to the transition from child to adult age rating at age 21.

2. Guaranteed Renewability

The final rule specifies two circumstances in which the discontinuation of all coverage currently offered by an issuer in a market in a State will not be considered a market withdrawal subject to the 5-year ban on market re-entry. These changes are generally consistent with State regulation of health insurance coverage. Consumers will benefit from the rule since imposing the 5-year ban on market re-entry in these situations could result in disruption for consumers and reduced competition in some markets.

3. Risk Adjustment

The risk adjustment program is a program created by the Affordable Care Act in which States, or HHS on behalf of States, collect charges from health insurance issuers that attract lower-risk populations in order to provide payments to health insurance issuers that attract higher-risk populations, such as those with chronic conditions, thereby reducing incentives for issuers to avoid higher-risk enrollees. We established standards for the administration of the risk adjustment program, in subparts D and G of part 45 of the CFR. The modifications to the risk adjustment model finalized in this rule are intended to improve the methodology and will result in more accurate risk adjustment charges and payments and mitigate any residual incentive for risk selection.

A State approved or conditionally approved by the Secretary to operate an Exchange may establish a risk adjustment program, or have HHS do so on its behalf. As described in the 2014, 2015, 2016 and 2017 Payment Notices, if HHS operates risk adjustment on behalf of a State, it will fund its risk adjustment program operations by assessing a risk adjustment user fee on issuers of risk adjustment covered plans. For the 2018 benefit year, we estimate that the total cost for HHS to operate the risk adjustment program on behalf of States for 2018 will be approximately $40 million, and under this final rule, the risk adjustment user fee will be $1.68 per enrollee per year. The risk adjustment user fee contract costs for 2018 include costs related to 2018 risk adjustment data validation, and are higher than the 2017 contract costs as the result of some contracts that were rebid, including since the publication of the proposed rule.

4. SHOP

The SHOPs facilitate the enrollment of eligible employees of eligible small employers into small group market health insurance plans. A qualitative analysis of the costs and benefits of establishing a SHOP was included in the RIA published in conjunction with the Exchange Establishment Rule.[72]

In § 155.230(d)(2), we require SHOPs to make electronic notices the default method of sending SHOP notices to employers and employees, unless otherwise required by State or Federal law, or unless the employer or employee elects otherwise. Electronic notices will provide a more cost effective way for SHOPs to distribute required notices and should decrease the SHOPs' costs for notifications.

In § 155.725(g), we amend the enrollment process for newly qualified employees in FF–SHOPs and in SBE–FPs using the Federal platform for SHOP functions, and specify that waiting periods in all SHOPs are calculated beginning on the date an employee becomes a qualified employee who is otherwise eligible for coverage. We believe these amendments will ensure that newly qualified employees in FF–SHOPs and in SBE–FPs using the Federal platform for SHOP functions have adequate time to make informed decisions regarding their coverage, and they are likely to have a negligible impact on plan premiums and to minimize the risk that qualified employers administering group health plans in FF–SHOPs and in SBE–FPs using the Federal platform for SHOP functions exceed the waiting period limits under § 147.116.

5. Direct Enrollment—Standardized Options Differential Display and Privacy/Security and Oversight

In §§ 155.220, 156.265, and 156.1230, we finalize requirements for Web-brokers and issuers related to the direct enrollment process that will provide consumer protections and ensure that consumers have necessary information to select coverage that best fit their needs. Web-brokers and issuers will incur administrative costs to comply with these requirements.

6. Eligibility and Enrollment Provisions

In § 155.400, we provide Exchanges with the discretion to allow issuers experiencing billing or enrollment problems due to high volume or technical errors to implement a reasonable extension of the binder payment deadlines in § 155.400(e)(1). This will allow consumers to remain enrolled through the Exchanges and to mitigate the problems associated with issuers receiving high-volumes of enrollments in a short timeframe. There will be no added cost to issuers who choose to implement the optional binder payment extensions, while ensuring that they would not lose enrollees who have not paid their binder payments simply because they did not receive their bills due to a processing backlog or a technical error. Consumers will benefit by having a reasonable amount of time to pay their binder payments, which should prevent coverage cancellations due to enrollment irregularities which are not the fault of the consumer.

In § 155.420, we codify several special enrollment periods that are already provided through the Exchange. By codifying these, we seek to ensure that these existing special enrollment periods are applied consistently across Exchanges, and to provide both issuers and consumers with greater certainty in how these special enrollment periods are applied. We believe that this certainty will contribute to greater stability in the market, and in the use of these special enrollment periods, specifically. In addition, we do not anticipate that any of the amendments to the existing parameters of special enrollment periods will reduce their availability to those individuals who should qualify under the provision's original intent.

We amend § 155.430(b)(2)(iii) to require that when an issuer seeks termination of a QHP on an Exchange via a rescission for fraud or misrepresentation of material fact under § 147.128, it must first demonstrate, to the reasonable satisfaction of the Exchange, that the basis for the rescission is appropriate, if the Exchange requires such a demonstration. This will not restrict issuers' ability to rescind coverage when an individual or a party working on behalf of an individual fraudulently enrolls in coverage, while protecting consumers whose enrollments conform to FFE and SBE–FP rules and guidance.

7. Standardized Options

We are finalizing new standardized options for 2018. As in 2017, offering standardized options will be voluntary for QHP issuers for the 2018 Plan Year. In keeping with the methodology used to design standardized options in 2017, we designed the 2018 standardized plans based on the median cost-sharing features of the most popular 2016 QHPs, based on enrollment, to ensure minimal market disruption and impact on premiums. For 2018, we are finalizing additional standardized options at each metal level and plan variation level (plus an additional bronze HDHP standardized option, within the meaning of section 223(c)(2) of the Code) with the goal of having one option at each metal level and plan variation level (plus the bronze HDHP option) that will comply with State cost-sharing laws as applicable. Each applicable State will have one standardized option at each metal level and plan variation that issuers will then be able to choose to offer. In the 2017 Payment Notice, we attempted to estimate the potential impact that the introduction of standardized options would have on premiums established by QHPs. As we previously estimated, we do not anticipate that standardized options will impact 2018 plan premiums significantly. To the extent it facilitates consumer shopping, it can put modest downward pressure on premiums.

8. User Fees

To support the operation of FFEs, we require in § 156.50(c) that a participating issuer offering a plan through an FFE must remit a user fee to HHS each month equal to the product of the monthly user fee rate specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year and the monthly premium charged by the issuer for each policy under the plan where enrollment is through an FFE. Under this final rule, for the 2018 benefit year, the monthly FFE user fee rate is equal to 3.5 percent and, for a State-based Exchange that relies on the Federal platform, 3.0 percent of the monthly premium. We had estimated the user fee transfers in the 2017 Payment Notice and there are no additional incremental charges. To avoid double-counting, we do not include the user fee costs in the accounting statement for this rule (Table 15). For the user fee charges assessed on issuers in the FFE and State-based Exchanges using the Federal platform, we have sought and received an exception to OMB Circular No. A–25R, which requires that the user fee charge be sufficient to recover the full cost to the Federal government of providing the special benefit. We sought this exception to ensure that the FFE can support many of the goals of the Affordable Care Act, including improving the health of the population, reducing health care costs, and providing access to health coverage as advanced by § 156.50(d).

[72] Available at *http://cciio.cms.gov/resources/files/Files2/03162012/hie3r-ria-032012.pdf.*

9. Levels of Coverage

At § 156.140, we are finalizing a change to the de minimis range of the actuarial value of bronze plans under certain circumstances. We believe that this policy will allow more flexibility in bronze plan designs which will allow increased consumer choice. We further believe that this policy will not be disruptive to the current bronze plan market, because it allows more options for issuers to leave 2017 cost-sharing structures unchanged. We also believe that this policy will allow issuers to continue to offer a range of bronze plans as the AV Calculator is updated in future years. We do not require plans to utilize this expanded bronze de minimis range, and therefore we do not anticipate any significant impact on average bronze plan premiums as a result of this policy.

10. Provisions Related to Cost Sharing

The Affordable Care Act provides for the reduction or elimination of cost sharing for certain eligible individuals enrolled in QHPs offered through the Exchanges. This assistance will help many low- and moderate-income individuals and families obtain health insurance—for many people, cost sharing is a barrier to obtaining needed health care.[73]

We set forth in this final rule the reductions in the maximum annual limitation on cost sharing for silver plan variations. Consistent with our analysis in previous payment notices, we developed three model silver level QHPs and analyzed the impact of the reductions described in the Affordable Care Act to the estimated 2018 maximum annual limitation on cost sharing for self-only coverage, which is $7,350 for the 2018 benefit year, on the QHPs' AVs. We do not believe these changes will result in a significant economic impact. Therefore, we do not believe the provisions related to the cost-sharing reduction portion of advance payments in this final rule will have an impact on the program established by and described in the 2015, 2016, and 2017 Payment Notices.

We also finalized the premium adjustment percentage for the 2018 benefit year. Section 156.130(e) provides that the premium adjustment percentage is the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013. The annual premium adjustment percentage sets the rate of increase for three parameters detailed in the Affordable Care Act: The annual limitation on cost sharing (defined at § 156.130(a)), the required contribution percentage used to determine eligibility for certain exemptions under section 5000A of the Code, and the assessable payments under section 4980H(a) and 4980H(b). We believe that the 2018 premium adjustment percentage of 16.17303196 percent is well within the parameters used in the modeling of the Affordable Care Act, and we do not expect that these provisions will alter CBO's March 2015 baseline estimates of the budget impact.

11. Qualified Health Plan Minimum Certification Standards

In § 156.200(c), we specify that, to satisfy the requirements in these sections, QHPs must be offered through the applicable Exchange at both the silver and gold coverage levels throughout each service area in which the issuer applying for certification offers coverage through the Exchange. Since most issuers are already following these requirements, it is unlikely that there will be any impact on premiums, while the requirements will help ensure continued plan choice for consumers.

In § 156.200(g), we specify that the certification standard regarding issuer participation in an FF–SHOP applies only for plan years beginning before January 1, 2018. The SHOP participation provision will no longer be a certification requirement for plan years that begin on or after January 1, 2018.

Section 156.272 establishes, as a condition of certification, that QHP issuers must make their QHPs available for enrollment through the Exchanges for the duration of the plan year for which the plan was certified, unless a basis for suppression under § 156.815 applies. QHP issuers in FFEs and FF–SHOPs that do not comply with this requirement can be subject to CMPs or a two-year ban. This will raise costs or burdens on some issuers, who may be forced to remain on the Exchange or face a 2-year ban or CMPs in certain situations. However, we believe this impact is minimal due to the small number of issuers that have sought to offer QHPs for less than a full plan year and is balanced by the additional choice and competition this requirement will offer.

12. Medical Loss Ratio

In this final rule, we amend § 158.121 to align with the requirement that, beginning in 2014, issuers must offer non-grandfathered coverage for a consecutive 12-month period and enable more issuers to defer reporting of the experience of new business in the MLR calculation when such business represents 50 percent or more of the total earned premium for an MLR reporting year. In general, the deferral of reporting of new business effectively enables new and rapidly growing issuers to use a 4-year, rather than a 3-year average MLR. This in turn increases the likelihood that low MLRs in the initial years will be offset by higher MLRs in later years and that only a portion of the rebates generated by the experience of initial years will ultimately be paid. Deferred reporting of new business also eliminates the rebate payment following the first year and instead spreads it over the following 3 years (that is, includes the rebate attributable to year 1 with rebates payable for years 2 through 4). Based on data from the 2013 and 2014 MLR reporting years, we estimate that allowing issuers to defer experience of newly sold policies with full 12 months of experience when 50 percent or more of an issuer's earned premium comes from such policies may reduce total rebate payments from issuers to consumers over a 4-year period by up to a total of $11.6 million.

We additionally amend § 158.240 to allow issuers the option of limiting the total rebate payable over the course of a 3-year period with respect to a given calendar year, as well as to clarify references to single-year and preliminary MLRs in § 158.232. We estimate no impact from the clarifications to § 158.232 because these clarifications are intended to simplify reporting for purposes of calculating the rebate limit provision in § 158.240 and do not change the manner in which issuers currently calculate the credibility adjustment. Because the amendments to § 158.240 generally will only impact new and rapidly growing established issuers whose MLRs initially fall below the standard and increase in subsequent years, the magnitude of the impact of the limit on the rebate liability will depend on how issuers' enrollment and MLRs change in future years. Because estimating the impact of the limit on rebate liability would require multiple years of data, and the majority of new issuers have expanded or intend to expand into new markets in 2014 or later, the 2014 and earlier MLR reports are an insufficient

[73] Brook, Robert H., John E. Ware, William H. Rogers, Emmett B. Keeler, Allyson Ross Davies, Cathy D. Sherbourne, George A. Goldberg, Kathleen N. Lohr, Patricia Camp and Joseph P. Newhouse. *The Effect of Coinsurance on the Health of Adults: Results from the RAND Health Insurance Experiment.* Santa Monica, CA: RAND Corporation, 1984. Available at *http://www.rand.org/pubs/reports/R3055.*

source of data on the types of issuers that will be impacted by this amendment. In addition, significant reporting differences exist between 2011–13 and 2014 and later MLR data, and some rebates that were paid for 2014 are believe to be outliers and may therefore exaggerate estimates. Consequently, while we expect the amendment to decrease the amount of rebates paid by new and rapidly growing issuers to consumers, we are not able to estimate the magnitude of the decrease with a high degree of certainty.

13. CO–OPs

Although most of the original $6 billion appropriated for the CO–OP program has been rescinded (as mentioned above), the program has issued significant sums to its borrowers. The total loan awards for currently operating CO–OPs are shown in Table 17.

TABLE 17—TOTAL LOAN AWARDS FOR CO–OPS OPERATING IN 2016 CO–OPS

CO–OP name	State	Current obligations
HealthyCT, Inc.	CT	$127,980,768
Land of Lincoln Mutual Health Insurance Company	IL	160,154,812
Minuteman Health, Inc.	MA, NH	156,442,995
Evergreen Health Cooperative, Inc.	MD	65,450,900
Maine Community Health Options	ME	132,316,124
Montana Health Cooperative	MT, ID	85,019,688
Freelancers Consumer Operated and Oriented Program of New Jersey, Inc.	NJ	109,074,550
New Mexico Health Connections	NM	77,317,782
Coordinated Health Mutual, Inc.	OH	129,225,604
Community Care of Oregon, Inc.	OR	56,656,900
Common Ground Healthcare Cooperative	WI	107,739,354
Total	11	1,207,379,477

With respect to the changes to the CO–OP program that we are implementing, we do not have any data available to estimate the likely number or magnitude of capital-raising transactions that may result from our changes. Directionally, we expect the changes to facilitate the raising of additional capital for some number of CO–OPs, and that the additional capital cushion will strengthen the financial base and allow those CO–OPs to better weather financial stress. We sought but did not receive any comments or supporting data that shed light on that potential impact.

D. Regulatory Alternatives Considered

In developing the policies contained in this final rule, we considered numerous alternatives to the presented proposals. Below we discuss the key regulatory alternatives that we considered.

Regarding the interpretation of what constitutes a market withdrawal, we considered imposing the 5-year prohibition on market re-entry when an issuer transfers all of its products to a related issuer or replaces all of its products with new products with changes that exceed the scope of a uniform modification of coverage. However, this approach could result in fewer product offerings, as some issuers would be obligated to leave the market. This approach could also unnecessarily restrict issuer corporate structuring transactions, reduce market competition and consumer choice, and conflict with States' approaches.

Regarding changes to the uniform child age band, we considered maintaining the use of a single age band for rating purposes for all individuals age 0 through 20. However, establishing multiple child age bands more accurately reflects the health risk of children and minimizes the increase in premium attributable to age when an individual attains age 21.

For the provisions in part 153, we considered various approaches to addressing partial year enrollment in the risk adjustment model, including separate models by enrollment duration, and interaction factors of enrollment duration combined with high- and medium-cost conditions. However, based on commenter feedback to the March 31, 2016 White Paper and our analysis of MarketScan® data, HHS determined that the enrollment duration additive factors are preferred, and will best address partial year enrollees in the short term.

We considered four different hybrid models for the inclusion of prescription drugs in the HHS risk adjustment methodology: An imputation-only model, a prescription drug-dominant model, a flexible model, and a severity-only model. Commenters to the White Paper suggested that we use the imputation only model or the flexible model, with constraints to prevent an issuer from being compensated less for recording prescription drug utilization for an enrollee. We have imposed constraints on the flexible model so that the coefficients for the drug terms are greater than zero, preventing such a situation. We are adding two severity-only drug-diagnosis pairs on top of ten imputation/severity drug-diagnosis pairs.

We considered various thresholds and coinsurance rates for the high-cost enrollee pool in the risk adjustment proposal. Lower thresholds and higher coinsurance rates could increase the risk of gaming among issuers and could decrease the incentive to contain costs, but would also increase the effectiveness of the high-cost enrollee pool. To balance these objectives, this final rule contains a threshold of $1 million and a 60 percent coinsurance rate for the high-cost enrollee pool in the risk adjustment model. We also considered a PMPM adjustment to the transfer formula for this high-cost enrollee pool, but we finalize here a percent of per member per month premium adjustment to the transfer formula, to better align with the transfer formula's adjustment at the billable member month premiums and to mitigate interstate transfer effects based on differing medical costs between States.

We considered using only 2014 MarketScan® data for 2018 recalibration. However, commenters to the White Paper preferred to continue using the 3-year blended approach. We considered using the most current MarketScan® data for 2018 recalibration, but commenters objected

to release of the final coefficients after the rate setting period for the benefit year. As provided in this final rule, HHS will publish final 2018 coefficients in early 2017, before issuers price for plan year 2018.

We considered alternative methodologies to recalibrating the 2019 risk adjustment model using EDGE summary level data instead of enrollee level data, as was proposed by one commenter to the White Paper. However, using EDGE summary level data would not enhance the existing risk adjustment models, as the model specifications would need to be known to create the models, and thus would prevent exploratory research and other types of analyses required for research, development, and refinement of the risk adjustment models for their continuous improvement. Further, if summary level data were used, quality checks could not be performed on the input data, and additional improvements to address partial year enrollment could not be explored.

For the provisions regarding standardized options, HHS considered taking no action to design additional plans to account for State cost-sharing laws. However, without this change, issuers in States with conflicting cost-sharing laws would not be able to offer standardized options. HHS believes that it is important for issuers in each State in which an FFE or SBE–FP operates to have the option to offer standardized options. HHS also considered designing a set of standardized plans for each State. However, HHS currently lacks the resources necessary to implement this option.

For the amendments at § 155.205(c)(2)(iii), we considered requiring QHP issuers and Web-brokers subject to the rule to look only to the LEP populations in the State where the entity is registered or licensed, such as through an issuer's Health Insurance Oversight System (HIOS) ID, when identifying the languages in which taglines must be provided under the rule. However, we believe that using such a definition would not recognize that many insurance companies that would fit our definition of a controlled group use a common technology platform across multiple States that is shared by their component health insurance issuers, and would pose difficult operational challenges for many such entities.

For the amendments at §§ 155.220(c)(3)(i)(H) and 156.265(b)(3)(iv), HHS considered not requiring differential display of standardized options by Web-brokers or QHP issuers. However, this would have made consumers using a non-Exchange Web sites less likely to be aware of available standardized options. HHS believes that the requirement for non-Exchange Web sites to differentially display standardized options will help consumers to more easily compare and choose amongst the available plans. HHS notes that we will not require the manner of differentiation of standardized plans on non-Exchange Web sites to be identical to the one adopted for displaying standardized options on *HealthCare.gov*, but they must have the same level of differentiation and clarity as is provided on *HealthCare.gov*. Further, issuers are not required to offer standardized plans nor are consumers required to purchase standardized options.

For amendments at § 155.400, we considered alternatives to our proposal to allow issuers the option to extend binder payment deadlines when issuers experience volume-related backlogs or technical errors that make it difficult for enrollees to pay their binder payments on time. For example, we considered relying on ad hoc solutions, such as extensions or remedies resembling reinstatements, when problems arise. We believe, however, that codifying the proposed optional extensions will give issuers and consumers alike more certainty and provide for better remedies when consumers experience difficulties during the enrollment process.

For the amendments at § 155.420, we considered not codifying the existing special enrollment periods for consumers who are or were victims of domestic abuse or spousal abandonment and need to enroll in coverage apart from their abusers or abandoners, have been determined ineligible for Medicaid or CHIP, have been impacted by a material plan or benefit display error, or have resolved a citizenship or immigration inconsistency post-expiration, all currently provided through guidance. We also considered not standardizing the availability of the special enrollment period for Indians to non-Indian dependents enrolling at the same time as the Indian. However, we believe that codifying these special enrollment periods provides needed permanence and clarity for these special enrollment periods. This is important to ensure that they continue to be available, are equitably applied across Exchanges, and that consumers, assisters, issuers, and other stakeholders have a common understanding of the parameters and coverage effective dates associated with each of these special enrollment periods. In this rule, we seek to ensure transparency, stability, and appropriate utilization of special enrollment periods by codifying certain special enrollment periods that we have made available in prior guidance. After weighing our options, we determined that codifying these currently available special enrollment periods is in the best interest of consumers and other Exchange stakeholders.

We considered alternatives to amending § 155.430 in order to protect consumers from having their coverage rescinded for reasons the FFE does not consider reasonable, such as rescissions based on allegations of fraud, despite the disputed information having been verified by the FFE during the enrollment process. One alternative was to issue guidance that would explain to issuers that rescissions based on claims of fraud arising from information provided to and verified by the FFE would not be permissible. Another alternative considered was to work with issuers to prevent rescissions considered unreasonable by the FFE, but to decline to pursue rulemaking. After considering all options, we chose to amend § 155.430(b)(2)(iii) in order to provide more consumer protection.

For the amendments related to SHOPs, HHS considered maintaining several provisions for the SHOPs. Specifically, HHS considered maintaining the current requirements at § 155.725(g)(1) and (2), which provide that an employee who becomes a qualified employee outside of the initial or annual open enrollment period must have an enrollment period beginning on the first day of becoming a qualified employee, and require the effective date of coverage to generally be determined in accordance with § 155.725(h). Similarly, HHS considered maintaining the current requirements at § 155.230(d)(2), which require paper notices to be the default communication option for SHOPs, so that employers and employees must opt into electronic notices. HHS also considered maintaining the current SHOP participation provision at § 156.200(g)(2). Finally, HHS considered maintaining existing requirements in State-based Exchanges using the Federal platform for SHOP eligibility, enrollment, or premium aggregation functions. With respect to the amendments proposed at § 155.725(g), in order to preserve flexibility for State-based Exchanges not using the Federal platform for SHOP functions, HHS decided to generally maintain the current rule for State-based Exchanges not using the Federal platform, and to finalize most of its proposed amendments to apply only in FF–SHOPs and SBE–FPs using the Federal

platform for SHOP functions, in order to minimize the risk that qualified employers administering group health plans in those SHOPs will exceed the waiting period limits under § 147.116, and to provide newly qualified employees in those SHOPs with sufficient time to make plan selections. The only amendment to § 155.725(g) that will apply in all SHOPs is a provision specifying when waiting periods in SHOPs begin. HHS also opted to finalize its proposal with respect to SHOP notices and SBE–FPs using the Federal platform for SHOP functions as proposed, in order to provide SHOPs with more cost-effective alternatives to sending notices, ensure efficient SHOP operations, and minimize the potential customization costs that could be associated with permitting State-based Exchanges to use the Federal platform for SHOP functions. HHS also decided to amend the policy in this final rule regarding the SHOP participation provision in order to encourage issuers to participate in the individual market FFEs.

HHS considered alternatives for increasing the de minimis range for bronze plans. HHS considered simply increasing the de minimis range for bronze plans to −2/+5 without requiring that plans include certain plan design features in order to qualify for the extended de minimis range. This option would give issuers, and as a result, consumers, more flexibility and choice in bronze plan designs. However, HHS believes that the final policy better ensures that bronze plans are not less generous than catastrophic plans.

At § 156.200(c)(1), HHS specifies that QHPs must be offered through an Exchange at both the silver and gold coverage levels throughout each service area in which the issuer offers coverage through the Exchange in order to satisfy the requirements of this section. HHS could have opted not to specify this in regulation; however, issuers could have misinterpreted the policy and not offered a silver and gold plan in all applicable service areas. This could result in fewer silver and gold plans available for consumers, and thus less choice for consumers. It also could complicate the calculation of the APTC for an individual market consumer. By revising our regulation, HHS ensures that consumers have adequate choice of QHPs at different coverage levels and that we are able to calculate APTC for all eligible individual market consumers.

In § 156.272, HHS requires issuers offering QHPs through an individual market Exchange or SHOP to make the QHP available for enrollment through the individual market Exchange or SHOP for the entirety of the period for which the plan was certified, unless a basis for suppression under § 156.815 applies. HHS considered taking no action; however, HHS is concerned that inaction could result in more limited access to QHPs for qualified individuals and qualified employees outside of open enrollment periods.

For the changes to § 156.290, HHS considered a requirement that issuers notify enrollees within 30 days of the denial of QHP certification for a subsequent, consecutive certification cycle. As pointed out by commenters to our proposed rule, such a requirement could have caused consumers to receive multiple notices when a plan is not certified and discontinued. Moreover, the 30 day requirement would not have aligned with the required timing for discontinuation notices. Therefore, HHS finalized a revised rule that aligns with existing requirements for renewal and discontinuation notices, as described above.

For the amendments to part 158, we considered an alternative approach for addressing the impact of MLR and rebate calculation on new and rapidly growing issuers. Specifically, we considered allowing new and rapidly growing issuers to include in the MLR calculation rebates they paid within the first 2 years of entering or expanding in a State market, which would be similar to how the 3-year average calculation was phased in for all issuers when the MLR requirements were first implemented. However, in contrast to the initial years of implementation of the MLR requirements, when all issuers had to calculate their first two MLRs using only 1 or 2 years of data, presently, as described in more detail in the preamble to this rule and the proposed rule, only a small subset of issuers are affected by the 3-year averaging in a manner that merits an adjustment. We note that inclusion of rebates paid for prior years in the MLR calculation for the current year is generally not appropriate for established and certain new issuers, as it would distort the 3-year average and effectively lower the MLR standards required by section 2718 of the PHS Act for these issuers. Therefore, the prior year rebate approach would need to be limited to only the new and rapidly growing issuers that are adversely affected by the 3-year averaging. In practice, it would be extremely challenging to define enrollment or premium levels, growth rates, and patterns in year-over-year changes in MLRs that would appropriately distinguish new and growing issuers that are disadvantaged by the 3-year averaging from issuers that merely experience ordinary enrollment fluctuations or otherwise would gain an unfair advantage by being able to include prior year rebates in their MLR calculations. Because the adopted approach of limiting the total rebate liability payable with respect to a given calendar year is designed to only benefit new and rapidly growing issuers who are negatively impacted by the 3-year averaging, we believe that the adopted approach is a more effective and objective way to reduce barriers to entry and promote competition in health insurance markets while at the same time preserving the protections promised to consumers by the law.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. In the proposed rule we certified that this regulation would not result in a significant impact on a substantial number of small entities. We did not receive any comments contradicting the RFA certification, so we are not required to prepare a final regulatory flexibility analysis for this final rule. (5 U.S.C. 604). The RFA generally defines a ''small entity'' as: (1) A proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses a change in revenues of more than 3 to 5 percent as its measure of significant economic impact on a substantial number of small entities.

In this final rule, we provide standards for the risk adjustment program, which are intended to stabilize premiums as insurance market reforms are implemented and Exchanges facilitate increased enrollment. Because we believe that insurance firms offering comprehensive health insurance policies generally exceed the size thresholds for ''small entities'' established by the SBA, we do not believe that a final regulatory flexibility analysis is required for such firms.

For purposes of the RFA, we expect the following types of entities to be affected by this final rule:

- Health insurance issuers.
- Group health plans.

We believe that health insurance issuers and group health plans would be classified under the North American Industry Classification System code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of $38.5 million or less would be considered small entities for these North American Industry Classification System codes. Issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $32.5 million or less.

Based on data from MLR annual report submissions for the 2014 MLR reporting year, approximately 118 out of 525 issuers of health insurance coverage nationwide had total premium revenue of $38.5 million or less. This estimate may overstate the actual number of small health insurance companies that may be affected, since almost 80 percent of these small companies belong to larger holding groups, and many if not all of these small companies are likely to have non-health lines of business that would result in their revenues exceeding $38.5 million. Only nine of these 118 potentially small entities, all of them part of larger holding groups, are estimated to experience a decrease in the rebate amount owed to consumers under the amendments to the MLR provisions of this final rule in part 158, and the decrease is estimated to not exceed 5 percent of health insurance premium revenue for any of these entities. Therefore, we certify that the provisions of this final rule regarding MLR will not affect a substantial number of small entities.

In this final rule, we finalize standards for employers that choose to participate in a SHOP Exchange. The SHOPs generally are limited by statute to employers with at least one but not more than 50 employees, unless a State opts to provide that employers with 1 to 100 employees are small employers. For this reason, we expect that many employers who will be affected by the proposals will meet the SBA standard for small entities. The policies amend current requirements to ensure that newly qualified employees in FF–SHOPs and in SBE–FPs using the Federal platform for SHOP functions have adequate time to make informed decisions regarding their coverage. However, these provisions are likely to result in minimal increase in administrative costs for employers, and have negligible impact on plan premiums. We believe the processes that we have established for SHOP eligibility and enrollment constitute the minimum amount of requirements necessary to implement the SHOP program and accomplish our policy goals, and that no appropriate regulatory alternatives could be developed to further lessen the compliance burden.

F. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a proposed rule that includes any Federal mandate that may result in expenditures in any 1 year by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately $146 million. Although we have not been able to quantify all costs, the combined administrative cost and user fee impact on State, local, or Tribal governments and the private sector may be above the threshold. Earlier portions of this RIA constitute our UMRA analysis with respect to the final rule.

G. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications. Because States have flexibility in designing their Exchanges and Exchange-related programs, State decisions will ultimately influence both administrative expenses and overall premiums. States are not required to establish an Exchange or risk adjustment program. For States that elected to operate an Exchange or, risk adjustment program, much of the initial cost of creating these programs were funded by Exchange Planning and Establishment Grants. After establishment, Exchanges must be financially self-sustaining, with revenue sources at the discretion of the State. Current State Exchanges charge user fees to issuers.

In HHS's view, while this final rule does not impose substantial direct requirement costs on State and local governments, this regulation has Federalism implications due to direct effects on the distribution of power and responsibilities among the State and Federal governments relating to determining standards relating to health insurance that is offered in the individual and small group markets. However, HHS anticipates that the Federalism implications (if any) are substantially mitigated because under the statute and our regulations, States have choices regarding the structure, governance, and operations of their Exchanges and risk adjustment program. For example, our provisions relating to binder payment rules and termination of coverage are intended to provide State Exchanges with significant flexibility. Additionally, the Affordable Care Act does not require States to establish these programs; if a State elects not to establish any of these programs or is not approved to do so, HHS must establish and operate the programs in that State. Additionally, States have the option to establish and operate their own SHOP without also establishing and operating their own individual market Exchange. Our provisions requiring SBE–FPs to establish requirements that are consistent with certain FF–SHOP requirements when using the Federal platform for certain SHOP functions will not apply should the State decide not to use the Federal platform for these SHOP functions.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policy making discretion of the States, HHS has engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners, and consulting with State insurance officials on an individual basis.

While developing this final rule, HHS has attempted to balance the States' interests in regulating health insurance issuers, and the policy goal of providing access to Exchanges for consumers in every State. By doing so, it is HHS's view that we have complied with the requirements of Executive Order 13132.

States will continue to license, monitor, and regulate agents and brokers, both inside and outside of Exchanges. All State laws related to agents and brokers, including State laws related to appointments, contractual relationships with issuers, licensing, marketing, conduct, and fraud will continue to apply.

The provisions from the interim final rule with comment do not impose substantial direct costs on State and local governments or preempt State law. However, we believe the rule has Federalism implications. In the amendments regarding the CO–OP program, we have amended a prohibition on participation on CO–OP board of directors that previously prevented any State employee from participating to allow certain State employees who are unlikely to have a

potential conflict of interest to participate. In removing the January 1, 2017 implementation deadline for (1) offering advance availability of the special enrollment period for qualified individuals who gain access to new QHPs as a result of a permanent move and (2) for offering the special enrollment period for losing a dependent or no longer being considered a dependent due to divorce, legal separation, or death, we leave implementation at the option of Exchanges, including State Exchanges.

H. Congressional Review Act

This rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801, *et seq.*), which specifies that before a rule can take effect, the Federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to Congress and the Comptroller for review.

List of Subjects

45 CFR Parts 144, 146, and 147

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 148

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 153

Administrative practice and procedure, Health care, Health insurance, Health records, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

45 CFR Part 154

Administrative practice and procedure, Claims, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 155

Administrative practice and procedure, Advertising, Brokers, Conflict of interest, Consumer protection, Grant administration, Grant programs—health, Health care, Health insurance, Health maintenance organizations (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, Technical assistance, Women and youth.

45 CFR Part 156

Administrative practice and procedure, Advertising, American Indian/Alaska Natives, Conflict of interest, Consumer protection, Cost-sharing reductions, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Individuals with disabilities, Loan programs—health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, Youth.

45 CFR Part 157

Employee benefit plans, Health insurance, Health maintenance organizations (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, Technical assistance, Women and youth.

45 CFR Part 158

Administrative practice and procedure, Claims, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department of Health and Human Services confirms as final, the interim rule published on May 11, 2016 (81 FR 29146) and further amends 45 CFR parts 144, 146, 147, 148, 153, 154, 155, 156, 157 and 158 as set forth below.

PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

■ 1. The authority citation for part 144 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act, 42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92.

■ 2. Section 144.103 is amended by revising the introductory text of the definition of ''Plan'' and by revising the definition of ''Product'' to read as follows:

§ 144.103 Definitions.

* * * * *

Plan means, with respect to a product, the pairing of the health insurance coverage benefits under the product with a particular cost-sharing structure, provider network, and service area. The product comprises all plans offered with those characteristics and the combination of the service areas for all plans offered within a product constitutes the total service area of the product. With respect to a plan that has been modified at the time of coverage renewal consistent with § 147.106 of this subchapter—

* * * * *

Product means a discrete package of health insurance coverage benefits that are offered using a particular product network type (such as health maintenance organization, preferred provider organization, exclusive provider organization, point of service, or indemnity) within a service area. In the case of a product that has been modified, transferred, or replaced, the resulting new product will be considered to be the same as the modified, transferred, or replaced product if the changes to the modified, transferred, or replaced product meet the standards of § 146.152(f), § 147.106(e), or § 148.122(g) of this subchapter (relating to uniform modification of coverage), as applicable.

* * * * *

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 3. The authority citation for part 146 continues to read as follows:

Authority: Secs. 2702 through 2705, 2711 through 2723, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 300gg–91, and 300gg–92).

■ 4. Section 146.152 is amended by adding paragraphs (d)(3) and (4) and revising paragraph (f)(3)(i) to read as follows:

§ 146.152 Guaranteed renewability of coverage for employers in the group market.

* * * * *

(d) * * *

(3) For purposes of this paragraph (d), subject to applicable State law, an issuer will not be considered to have discontinued offering all health insurance coverage in a market in a State if—

(i) The issuer (in this paragraph referred to as the initial issuer) or, if the issuer is a member of a controlled group, any other issuer that is a member of such controlled group, offers and makes available in the applicable market in the State at least one product that is considered in accordance with § 144.103 of this subchapter to be the same product as a product the initial issuer had been offering in such market in such State; or

(ii) The issuer—

(A) Offers and makes available at least one product (in paragraphs (d)(3)(ii)(A) through (C) of this section referred to as the new product) in the applicable market in the State, even if such product is not considered in accordance with § 144.103 of this subchapter to be the same product as a product the issuer had been offering in the applicable market in the State (in paragraphs (d)(3)(ii)(A) through (C) of this section referred to as the discontinued product);

(B) Subjects such new product or products to the applicable process and requirements established under part 154 of this title as if such process and requirements applied with respect to that product or products, to the extent such process and requirements are otherwise applicable to coverage of the same type and in the same market; and

(C) Reasonably identifies the discontinued product or products that correspond to the new product or products for purposes of the process and requirements applied pursuant to paragraph (d)(3)(ii)(B) of this section.

(4) For purposes of this section, the term controlled group means a group of two or more persons that is treated as a single employer under sections 52(a), 52(b), 414(m), or 414(o) of the Internal Revenue Code of 1986, as amended, or a narrower group as may be provided by applicable State law.

* * * * *

(f) * * *

(3) * * *

(i) The product is offered by the same health insurance issuer (within the meaning of section 2791(b)(2) of the PHS Act), or if the issuer is a member of a controlled group (as described in paragraph (d)(4) of this section), any other health insurance issuer that is a member of such controlled group;

* * * * *

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 5. The authority citation for part 147 continues to read as follows:

Authority: Secs 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 6. Section 147.102 is amended by revising paragraphs (d)(1) and (e) to read as follows:

§ 147.102 Fair health insurance premiums.

* * * * *

(d) * * *

(1) *Child age bands.* (i) For plan years or policy years beginning before January 1, 2018, a single age band for individuals age 0 through 20.

(ii) For plan years or policy years beginning on or after January 1, 2018:

(A) A single age band for individuals age 0 through 14.

(B) One-year age bands for individuals age 15 through 20.

* * * * *

(e) *Uniform age rating curves.* Each State may establish a uniform age rating curve in the individual or small group market, or both markets, for rating purposes under paragraph (a)(1)(iii) of this section. If a State does not establish a uniform age rating curve or provide information on such age curve in accordance with § 147.103, a default uniform age rating curve specified in guidance by the Secretary to reflect market patterns in the individual and small group markets will apply in that State that takes into account the rating variation permitted for age under State law.

* * * * *

■ 7. Section 147.104 is amended by revising paragraph (b)(2) to read as follows:

§ 147.104 Guaranteed availability of coverage.

* * * * *

(b) * * *

(2) *Limited open enrollment periods.* (i) A health insurance issuer in the individual market must provide a limited open enrollment period for the triggering events described in § 155.420(d) of this subchapter, excluding the following:

(A) Section 155.420(d)(3) of this subchapter (concerning Exchange eligibility standards);

(B) Section 155.420(d)(6) of this subchapter (to the extent concerning eligibility for advance payments of the premium tax credit or change in eligibility for cost-sharing reductions other than ineligibility);

(C) Section 155.420(d)(8) of this subchapter (concerning Indians);

(D) Section 155.420(d)(9) of this subchapter (concerning exceptional circumstances);

(E) Section 155.420(d)(12) of this subchapter (concerning plan and benefit display errors); and

(F) Section 155.420(d)(13) of this subchapter (concerning eligibility for insurance affordability programs or enrollment in the Exchange).

(ii) In applying this paragraph (b)(2), a reference in § 155.420 of this subchapter to a ''QHP'' is deemed to refer to a plan, a reference to ''the Exchange'' is deemed to refer to the applicable State authority, and a reference to a ''qualified individual'' is deemed to refer to an individual in the individual market.

* * * * *

■ 8. Section 147.106 is amended by adding paragraphs (d)(3) and (4) and revising paragraphs (e)(3)(i) and (h)(2) to read as follows:

§ 147.106 Guaranteed renewability of coverage.

* * * * *

(d) * * *

(3) For purposes of this paragraph (d), subject to applicable State law, an issuer will not be considered to have discontinued offering all health insurance coverage in a market in a State if—

(i) The issuer (in this paragraph referred to as the initial issuer) or, if the issuer is a member of a controlled group, any other issuer that is a member of such controlled group, offers and makes available in the applicable market in the State at least one product that is considered in accordance with § 144.103 of this subchapter to be the same product as a product the initial issuer had been offering in such market in such State; or

(ii) The issuer—

(A) Offers and makes available at least one product (in paragraphs (d)(3)(ii)(A) through (C) of this section referred to as the new product) in the applicable market in the State, even if such product is not considered in accordance with § 144.103 of this subchapter to be the same product as a product the issuer had been offering in the applicable market in the State (in paragraphs (d)(3)(ii)(A) through (C) of this section referred to as the discontinued product);

(B) Subjects such new product or products to the applicable process and requirements established under part 154 of this title as if such process and requirements applied with respect to that product or products, to the extent such process and requirements are otherwise applicable to coverage of the same type and in the same market; and

(C) Reasonably identifies the discontinued product or products that correspond to the new product or products for purposes of the process and requirements applied pursuant to paragraph (d)(3)(ii)(B) of this section.

(4) For purposes of this section, the term controlled group means a group of two or more persons that is treated as a single employer under sections 52(a), 52(b), 414(m), or 414(o) of the Internal Revenue Code of 1986, as amended, or a narrower group as may be provided by applicable State law.

(e) * * *

(3) * * *

(i) The product is offered by the same health insurance issuer (within the meaning of section 2791(b)(2) of the PHS Act), or if the issuer is a member of a controlled group (as described in paragraph (d)(4) of this section), any other health insurance issuer that is a member of such controlled group);

* * * * *

(h) * * *

(2) Medicare entitlement or enrollment is not a basis to nonrenew an individual's health insurance coverage in the individual market under the same policy or contract of insurance.

* * * * *

PART 148—REQUIREMENTS FOR THE INDIVIDUAL HEALTH INSURANCE MARKET

■ 9. The authority citation for part 148 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791 and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 10. Section 148.122 is amended by—

■ a. Revising paragraph (b)(2);

■ b. Adding paragraphs (e)(4) and (5); and

■ c. Revising paragraph (g)(3)(i).

The revisions and addition read as follows:

§ 148.122 Guaranteed renewability of individual health insurance coverage.

* * * * *

(b) * * *

(2) Medicare entitlement or enrollment is not a basis to nonrenew an individual's health insurance coverage in the individual market under the same policy or contract of insurance.

* * * * *

(e) * * *

(4) For purposes of this paragraph (e), subject to applicable State law, an issuer will not be considered to have discontinued offering all health insurance coverage in a market in a State if—

(i) The issuer (in this paragraph referred to as the initial issuer) or, if the issuer is a member of a controlled group, any other issuer that is a member of such controlled group, offers and makes available in the applicable market in the State at least one product that is considered in accordance with § 144.103 of this subchapter to be the same product as a product the initial issuer had been offering in such market in such State; or

(ii) The issuer—

(A) Offers and makes available at least one product (in paragraphs (e)(4)(ii)(A) through (C) of this section referred to as the new product) in the applicable market in the State, even if such product is not considered in accordance with § 144.103 of this subchapter to be the same product as a product the issuer had been offering in the applicable market in the State (in paragraphs (e)(4)(ii)(A) through (C) of this section referred to as the discontinued product);

(B) Subjects such new product or products to the applicable process and requirements established under part 154 of this title as if such process and requirements applied with respect to that product or products, to the extent such process and requirements are otherwise applicable to coverage of the same type and in the same market; and

(C) Reasonably identifies the discontinued product or products that correspond to the new product or products for purposes of the process and requirements applied pursuant to paragraph (e)(4)(ii)(B) of this section.

(5) For purposes of this section, the term controlled group means a group of two or more persons that is treated as a single employer under sections 52(a), 52(b), 414(m), or 414(o) of the Internal Revenue Code of 1986, as amended, or a narrower group as may be provided by applicable State law.

* * * * *

(g) * * *

(3) * * *

(i) The product is offered by the same health insurance issuer (within the meaning of section 2791(b)(2) of the PHS Act), or if the issuer that is a member of a controlled group (as described in paragraph (e)(5) of this section), any other health insurance issuer that is a member of such controlled group;

* * * * *

PART 153—STANDARDS RELATED TO REINSURANCE, RISK CORRIDORS, AND RISK ADJUSTMENT UNDER THE AFFORDABLE CARE ACT

■ 11. The authority citation for part 153 continues to read as follows:

Authority: Secs. 1311, 1321, 1341–1343, Pub. L. 111–148, 24 Stat. 119.

§ 153.20 [Amended]

■ 12. Section 153.20 is amended by removing the definition of ''Large employer''.

■ 13. Section 153.320 is amended by revising paragraphs (a)(1) and (b)(1)(i) to read as follows:

§ 153.320 Federally certified risk adjustment methodology.

(a) * * *

(1) The risk adjustment methodology is developed by HHS and published in advance of the benefit year in rulemaking; or

* * * * *

(b) * * *

(1) * * *

(i) Draft factors to be employed in the model, including but not limited to, demographic factors, diagnostic factors, and utilization factors, if any, the dataset(s) to be used to calculate final coefficients, and the date by which final coefficients will be released in guidance;

* * * * *

■ 14. Section 153.610 is amended by revising paragraph (f)(2) to read as follows:

§ 153.610 Risk adjustment issuer requirements.

* * * * *

(f) * * *

(2) Remit to HHS an amount equal to the product of its monthly billable enrollment in the risk adjustment covered plan multiplied by the per-enrollee-per-month risk adjustment user fee specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year.

■ 15. Section 153.630 is amended by—

■ a. Redesignating paragraphs (b)(7)(iii) and (iv) as paragraphs (b)(7)(iv) and (v), respectively;

■ b. Adding a new paragraph (b)(7)(iii); and

■ c. Revising paragraph (d).

The addition and revision read as follows:

§ 153.630 Data validation requirements when HHS operates risk adjustment.

* * * * *

(b) * * *

(7) * * *

(iii) Beginning in the 2018 benefit year, validating enrollee health status through review of all relevant paid pharmacy claims;

* * * * *

(d) *Risk adjustment data validation disputes and appeals.* (1) Within 15 calendar days of notification of the initial validation audit sample determined by HHS, in the manner set forth by HHS, an issuer must confirm the sample or file a discrepancy report to dispute the initial validation audit sample determined by HHS.

(2) Within 30 calendar days of notification of the findings of a second validation audit or the calculation of a risk score error rate, in the manner set forth by HHS, an issuer must confirm the audit or error rate, or file a discrepancy report to dispute the findings of a second validation audit or the calculation of a risk score error rate as result of risk adjustment data validation.

(3) An issuer may appeal the findings of a second validation audit or the calculation of a risk score error rate as result of risk adjustment data validation, under the process set forth in § 156.1220 of this subchapter.

* * * * *

PART 154—HEALTH INSURANCE ISSUER RATE INCREASES: DISCLOSURE AND REVIEW REQUIREMENTS

■ 16. The authority citation for part 154 continues to read as follows:

Authority: Section 2794 of the Public Health Service Act (42 U.S.C. 300gg–94).

■ 17. Section 154.102 is amended by revising the definition of ''Product'' to read as follows:

§ 154.102 Definitions.

* * * * *

Product means a package of health insurance coverage benefits with a discrete set of rating and pricing methodologies offered in a State. The term product includes any product that is discontinued and newly filed within a 12-month period when the changes to the product meet the standards of § 147.106(e)(2) or (3) of this subchapter (relating to uniform modification of coverage).

* * * * *

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 18. The authority citation for part 155 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301, 1302, 1303, 1304, 1311, 1312, 1313, 1321, 1322, 1331, 1332, 1334, 1402, 1411, 1412, 1413, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083).

■ 19. Section 155.20 is amended by revising the definition of ''Standardized option'' to read as follows:

§ 155.20 Definitions

* * * * *

Standardized option means a QHP offered for sale through an individual market Exchange that either—

(1) Has a standardized cost-sharing structure specified by HHS in rulemaking; or

(2) Has a standardized cost-sharing structure specified by HHS in rulemaking that is modified only to the extent necessary to align with high deductible health plan requirements under section 223 of the Internal Revenue Code of 1986, as amended, or the applicable annual limitation on cost sharing and HHS actuarial value requirements.

* * * * *

■ 20. Section 155.200 is amended by adding paragraph (f)(4) to read as follows:

§ 155.200 Functions of an Exchange.

* * * * *

(f) * * *

(4) A State Exchange on the Federal platform that utilizes the Federal platform for certain SHOP functions, as set forth in paragraphs (f)(4)(i) through (vii) of this section, must—

(i) If utilizing the Federal platform for SHOP eligibility, enrollment, or premium aggregation functions, establish standard processes for premium calculation, premium payment, and premium collection that are consistent with the requirements applicable in a Federally-facilitated SHOP under § 155.705(b)(4);

(ii) If utilizing the Federal platform for SHOP enrollment or premium aggregation functions, require its QHP issuers to make any changes to rates in accordance with the timeline applicable in a Federally-facilitated SHOP under § 155.705(b)(6)(i)(A);

(iii) If utilizing the Federal platform for SHOP enrollment functions, establish minimum participation rate requirements and calculation methodologies that are consistent with those applicable in a Federally-facilitated SHOP under § 155.705(b)(10);

(iv) If utilizing the Federal platform for SHOP enrollment or premium aggregation functions, establish employer contribution methodologies that are consistent with the methodologies applicable in a Federally-facilitated SHOP under § 155.705(b)(11)(ii);

(v) If utilizing the Federal platform for SHOP enrollment functions, establish annual employee open enrollment period requirements that are consistent with § 155.725(e)(2);

(vi) If utilizing the Federal platform for SHOP enrollment functions, establish effective dates of coverage for an initial group enrollment or a group renewal that are consistent with the effective dates of coverage applicable in a Federally-facilitated SHOP under § 155.725(h)(2); and

(vii) If utilizing the Federal platform for SHOP eligibility, enrollment, or premium aggregation functions, establish policies for the termination of SHOP coverage or enrollment that are consistent with the requirements applicable in a Federally-facilitated SHOP under § 155.735.

■ 21. Section 155.205 is amended by revising paragraphs (c)(2)(iii)(A) and (B) to read as follows:

§ 155.205 Consumer assistance tools and programs of an Exchange.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(A) For Exchanges and QHP issuers, this standard also includes taglines on Web site content and any document that is critical for obtaining health insurance coverage or access to health care services through a QHP for qualified individuals, applicants, qualified employers, qualified employees, or enrollees. A document is deemed to be critical for obtaining health insurance coverage or access to health care services through a QHP if it is required to be provided by law or regulation to a qualified individual, applicant, qualified employer, qualified employee, or enrollee. Such taglines must indicate the availability of language services in at least the top 15 languages spoken by the limited English proficient population of the relevant State or States, as determined in guidance published by the Secretary. If an Exchange is operated by an entity that operates multiple Exchanges, or if an Exchange relies on an entity to conduct its eligibility or enrollment functions and that entity conducts such functions for multiple Exchanges, the Exchange may aggregate the limited English proficient populations across all the States served by the entity that operates the Exchange or conducts its eligibility or enrollment functions to determine the top 15 languages required for taglines. A QHP issuer may aggregate the limited English proficient populations across all States served by the health insurance issuers within the issuer's controlled group (defined for purposes of this section as a group of two or more persons that is treated as a single employer under sections 52(a), 52(b), 414(m), or 414(o) of the Internal Revenue Code of 1986, as amended), whether or not those health insurance issuers offer plans through the Exchange in each of those States, to determine the top 15 languages required for taglines. Exchanges and QHP issuers may satisfy tagline requirements with respect to Web site content if they post a Web link prominently on their home page that directs individuals to the full text of the taglines indicating how individuals may obtain language assistance services, and if they also include taglines on any critical stand-alone document linked to or embedded in the Web site. Exchanges, and QHP issuers that are also subject to § 92.8 of

this subtitle, will be deemed in compliance with paragraph (c)(2)(iii)(A) of this section if they are in compliance with § 92.8 of this subtitle.

(B) For an agent or broker subject to § 155.220(c)(3)(i), beginning when such entity has been registered with the Exchange for at least 1 year, this standard also includes taglines on Web site content and any document that is critical for obtaining health insurance coverage or access to health care services through a QHP for qualified individuals, applicants, qualified employers, qualified employees, or enrollees. A document is deemed to be critical for obtaining health insurance coverage or access to health care services through a QHP if it is required to be provided by law or regulation to a qualified individual, applicant, qualified employer, qualified employee, or enrollee. Such taglines must indicate the availability of language services in at least the top 15 languages spoken by the limited English proficient population of the relevant State or States, as determined in guidance published by the Secretary. An agent or broker subject to § 155.220(c)(3)(i) that is licensed in and serving multiple States may aggregate the limited English populations in the States it serves to determine the top 15 languages required for taglines. An agent or broker subject to § 155.220(c)(3)(i) may satisfy tagline requirements with respect to Web site content if it posts a Web link prominently on its home page that directs individuals to the full text of the taglines indicating how individuals may obtain language assistance services, and if it also includes taglines on any critical stand-alone document linked to or embedded in the Web site.

* * * * *

■ 22. Section 155.220 is amended by:

■ a. Revising paragraph (c)(3)(i)(E);

■ b. Removing the word ''and'' at the end of paragraph (c)(3)(i)(F);

■ c. Removing the period at the end of paragraph (c)(3)(i)(G) and adding ''; and'' in its place;

■ d. Adding paragraph (c)(3)(i)(H) through (L); and

■ e. Revising paragraphs (c)(4)(i)(E) and (j)(2)(i).

The additions and revisions read as follows:

§ 155.220 Ability of States to permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs.

* * * * *

(c) * * *

(3)(i) * * *

(E) Maintain audit trails and records in an electronic format for a minimum of ten years and cooperate with any audit under this section;

* * * * *

(H) Differentially display all standardized options prominently and in accordance with the requirements under § 155.205(b)(1) in a manner consistent with that adopted by HHS for display on the Federally-facilitated Exchange Web site and with standards defined by HHS, unless HHS approves a deviation;

(I) Prominently display information provided by HHS pertaining to a consumer's eligibility for advance payments of the premium tax credit or cost-sharing reductions;

(J) Allow the consumer to select an amount for advance payments of the premium tax credit, if applicable, and make related attestations in accordance with § 155.310(d)(2);

(K) Demonstrate operational readiness and compliance with applicable requirements prior to the agent or broker's Internet Web site being used to complete the QHP selection; and

(L) HHS may immediately suspend the agent or broker's ability to transact information with the Exchange if HHS discovers circumstances that pose unacceptable risk to Exchange operations or Exchange information technology systems until the incident or breach is remedied or sufficiently mitigated to HHS's satisfaction.

* * * * *

(4) * * *

(i) * * *

(E) Report to HHS and applicable State departments of insurance any potential material breach of the standards in paragraphs (c) and (d) of this section, or the agreement entered into under § 155.260(b), by the agent or broker accessing the Internet Web site, should it become aware of any such potential breach. An agent or broker that provides access to its Web site to complete the QHP selection or the Exchange eligibility application or ability to transact information with HHS to another agent or broker Web site is responsible for ensuring compliance with applicable requirements in paragraph (c)(3) of this section for any Web pages of the other agent's or broker's Web site that assist consumers, applicants, qualified individuals, and enrollees in applying for APTC and CSRs for QHPs, or in completing enrollment in QHPs, offered in the Exchanges.

* * * * *

(j) * * *

(2) * * *

(i) Provide consumers with correct information, without omission of material fact, regarding the Federally-facilitated Exchanges, QHPs offered through the Federally-facilitated Exchanges, and insurance affordability programs, and refrain from marketing or conduct that is misleading (including by having a direct enrollment Web site that HHS determines could mislead a consumer into believing they are visiting *HealthCare.gov*), coercive, or discriminates based on race, color, national origin, disability, age, sex, gender identity, or sexual orientation;

* * * * *

■ 23. Section 155.221 is added to read as follows:

§ 155.221 Standards for HHS-approved vendors to perform audits of agents and brokers participating in direct enrollment.

(a) *Application for approval.* (1) A vendor must be approved by HHS, in a form and manner to be determined by HHS, to have its auditing services recognized for Web-brokers assisting with or facilitating enrollment in individual market or SHOP coverage through the Exchanges consistent with § 155.220.

(2) HHS will approve vendors on an annual basis for a given plan year, and each vendor must submit an application for each year that approval is sought.

(b) *Standards.* To be approved by HHS and maintain its status as an approved vendor, a vendor applicant must meet each of the following standards:

(1) Submit a complete and accurate application by the deadline established by HHS that demonstrates prior experience successfully conducting auditing or similar services to a large customer base.

(2) Adhere to HHS specifications for content, format, privacy and security in the delivery of auditing services, which includes ensuring that Web-brokers are in compliance with the applicable privacy and security standards.

(3) Collect, store, and share with HHS data from Web-broker users of the vendor's auditing services in a manner, format, and frequency specified by HHS, and protect all data from Web-broker users of the vendor's auditing services in accordance with § 155.260.

(4) Permit any Web-broker registered with the FFEs to access the vendor's auditing services.

(c) *Monitoring.* HHS may periodically monitor and audit vendors approved under this subpart, and their records related to the audit services described in this section, to ensure ongoing compliance with the standards in paragraph (b) of this section. If HHS determines that an HHS-approved vendor is not in compliance with

paragraph (b) of this section, the vendor may be removed from the approved list described in paragraph (d) of this section and may be required by HHS to cease performing the functions described under this section.

(d) *Approved list.* A list of approved vendors will be published on an HHS Web site.

(e) *Appeals.* A vendor that is not approved by HHS after submitting the application described in paragraph (a) of this section, or a vendor whose approval is revoked under paragraph (c) of this section, may appeal HHS's decision by notifying HHS in writing within 15 days from receipt of the notification of not being approved or having its approval revoked and submitting additional documentation demonstrating how the vendor meets the standards in paragraph (b) of this section and (if applicable) the terms of its agreement with HHS. HHS will review the submitted documentation within 30 days from receipt of the additional documentation.

■ 24. Section 155.230 is amended by revising paragraph (d)(2) and adding paragraph (d)(3) to read as follows:

§ 155.230 General standards for Exchange notices.

* * * * *

(d) * * *

(2) Unless otherwise required by Federal or State law, the SHOP must provide required notices electronically or, if an employer or employee elects, through standard mail. If notices are provided electronically, the SHOP must comply with the requirements for electronic notices in 42 CFR 435.918(b)(2) through (5) for the employer or employee.

(3) In the event that an individual market Exchange or SHOP is unable to send select required notices electronically due to technical limitations, it may instead send these notices through standard mail, even if an election has been made to receive such notices electronically.

■ 25. Section 155.305 is amended by revising paragraph (f)(4) to read as follows:

§ 155.305 Eligibility standards.

* * * * *

(f) * * *

(4) *Compliance with filing requirement.* (i) The Exchange may not determine a tax filer eligible for advance payments of the premium tax credit if HHS notifies the Exchange as part of the process described in § 155.320(c)(3) that advance payments of the premium tax credit were made on behalf of the tax filer or either spouse if the tax filer is a married couple for a year for which tax data would be utilized for verification of household income and family size in accordance with § 155.320(c)(1)(i), and the tax filer or his or her spouse did not comply with the requirement to file an income tax return for that year as required by 26 U.S.C. 6011, 6012, and implementing regulations and reconcile the advance payments of the premium tax credit for that period.

(ii) Notwithstanding the requirement in paragraph (f)(4)(i) of this section, the Exchange may not deny eligibility for advance payments of the premium tax credit under paragraph (f)(4)(i) of this section unless direct notification is first sent to the tax filer, consistent with the standards set forth in § 155.230, that his or her eligibility will be discontinued as a result of the tax filer's failure to comply with the requirement specified under paragraph (f)(4)(i) of this section.

* * * * *

■ 26. Section 155.330 is amended by—

■ a. Revising paragraphs (d)(1)(ii), and (e)(2)(i) introductory text;

■ b. Adding paragraph (e)(2)(iii); and

■ c. Revising paragraph (g)(1).

The addition and revisions read as follows:

§ 155.330 Eligibility redetermination during a benefit year.

* * * * *

(d) * * *

(1) * * *

(ii) For an enrollee on whose behalf advance payments of the premium tax credit or cost-sharing reductions are being provided, eligibility determinations for or enrollment in Medicare, Medicaid, CHIP, or the Basic Health Program, if a Basic Health Program is operating in the service area of the Exchange.

* * * * *

(e) * * *

(2) * * *

(i) Except as provided in paragraph (e)(2)(iii) of this section, if the Exchange identifies updated information regarding death, in accordance with paragraph (d)(1)(i) of this section, or regarding any factor of eligibility not regarding income, family size, or family composition, or tax filing status, the Exchange must—

* * * * *

(iii) If the Exchange identifies updated information that the tax filer for the enrollee's household or the tax filer's spouse did not comply with the requirements described in § 155.305(f)(4), the Exchange when redetermining and providing notification of eligibility for advance payments of the premium tax credit must:

(A) Follow the procedures specified in paragraph (e)(2)(i) of this section;

(B) Follow the procedures in guidance published by the Secretary; or

(C) Follow alternative procedures approved by the Secretary based on a showing by the Exchange that the alternative procedures facilitate continued enrollment in coverage with financial assistance for which the enrollee remains eligible, provide appropriate information about the process to the enrollee (including regarding any action by the enrollee necessary to obtain the most accurate redetermination of eligibility), and provide adequate program integrity protections and safeguards for Federal tax information under section 6103 of the Internal Revenue Code with respect to the confidentiality, disclosure, maintenance, or use of such information.

* * * * *

(g) * * *

(1) When an eligibility redetermination in accordance with this section results in a change in the amount of advance payments of the premium tax credit for the benefit year, the Exchange must:

(i) Recalculate the amount of advance payments of the premium tax credit in such a manner as to account for any advance payments already made on behalf of the tax filer for the benefit year for which information is available to the Exchange, such that the recalculated advance payment amount is projected to result in total advance payments for the benefit year that correspond to the tax filer's total projected premium tax credit for the benefit year, calculated in accordance with 26 CFR 1.36B–3 (or, if less than zero, be set at zero); or

(ii) Recalculate advance payments of the premium tax credit using an alternate method that has been approved by the Secretary.

* * * * *

■ 27. Section 155.400 is amended by—

■ a. Revising paragraphs (e) introductory text and (e)(1) introductory text;

■ b. Adding paragraph (e)(2); and

■ c. Revising paragraph (g) introductory text.

The revisions and addition read as follows:

§ 155.400 Enrollment of qualified individuals into QHPs.

* * * * *

(e) *Premium payment.* Exchanges may, and the Federally-facilitated Exchanges and State-Based Exchanges on the Federal Platform will, require

payment of a binder payment to effectuate an enrollment or to add coverage retroactively to an already effectuated enrollment. Exchanges may, and the Federally-facilitated Exchanges and State-Based Exchanges on the Federal Platform will, establish a standard policy for setting premium payment deadlines:

(1) In a Federally-facilitated Exchange or State-Based Exchange on the Federal Platform:

* * * * *

(2) *Premium payment deadline extension.* Exchanges may, and the Federally-facilitated Exchanges and State-Based Exchanges on the Federal Platform will, allow issuers experiencing billing or enrollment problems due to high volume or technical errors to implement a reasonable extension of the binder payment deadlines in paragraph (e)(1) of this section.

* * * * *

(g) *Premium payment threshold.* Exchanges may, and the Federally-facilitated Exchanges and State-Based Exchanges on the Federal Platform will, allow issuers to implement, a premium payment threshold policy under which issuers can consider enrollees to have paid all amounts due if the enrollees pay an amount sufficient to maintain a percentage of total premium paid out of the total premium owed equal to or greater than a level prescribed by the issuer, provided that the level is reasonable and that the level and the policy are applied in a uniform manner to all enrollees. If an applicant or enrollee satisfies the premium payment threshold policy, the issuer may:

* * * * *

■ 28. Section 155.420 is amended by:

■ a. Revising paragraphs (b)(2)(iii) and (iv);

■ b. Adding paragraph (b)(5);

■ c. Revising paragraphs (c)(2), (d)(1)(i) and (iii), (d)(2)(ii), (d)(3), (d)(6)(iv), and (d)(7), (8), and (9); and

■ d. Adding paragraphs (d)(10) through (13).

The revisions and additions read as follows:

§ 155.420 Special enrollment periods.

* * * * *

(b) * * *

(2) * * *

(iii) In the case of a qualified individual or enrollee eligible for a special enrollment period as described in paragraph (d)(4), (5), (9), (11), (12), or (13) of this section, the Exchange must ensure that coverage is effective on an appropriate date based on the circumstances of the special enrollment period.

(iv) If a consumer loses coverage as described in paragraph (d)(1) or (d)(6)(iii) of this section, gains access to a new QHP as described in paragraph (d)(7) of this section, becomes newly eligible for enrollment in a QHP through the Exchange in accordance with § 155.305(a)(2) as described in paragraph (d)(3) of this section, or becomes newly eligible for advance payments of the premium tax credit in conjunction with a permanent move as described in paragraph (d)(6)(iv) of this section, if the plan selection is made on or before the day of the triggering event, the Exchange must ensure that the coverage effective date is on the first day of the month following the date of the triggering event. If the plan selection is made after the date of the triggering event, the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the following month, at the option of the Exchange.

* * * * *

(5) *Option for later coverage effective dates due to prolonged eligibility verification.* At the option of the consumer, the Exchange must provide an appropriate coverage effective date that is later than the effective date specified in paragraph (b) of this section if a consumer's enrollment is delayed until after the Exchange's verification of the consumer's eligibility for a special enrollment period, and the assignment of a coverage effective date consistent with paragraph (b) of this section would result in the consumer being required to pay two or more months of retroactive premium to effectuate coverage or avoid termination for non-payment.

(c) * * *

(2) *Advanced availability.* A qualified individual or his or her dependent who is described in paragraph (d)(1) or (d)(6)(iii) of this section has 60 days before or after the triggering event to select a QHP. At the option of the Exchange, a qualified individual or his or her dependent who is described in paragraph (d)(7) of this section; who is described in paragraph (d)(6)(iv) of this section and becomes newly eligible for advance payments of the premium tax credit as a result of a permanent move to a new State; or who is described in paragraph (d)(3) of this section and becomes newly eligible for enrollment in a QHP through the Exchange because he or she newly satisfies the requirements under § 155.305(a)(2), has 60 days before or after the triggering event to select a QHP.

* * * * *

(d) * * *

(1) * * *

(i) Loses minimum essential coverage. The date of the loss of coverage is the last day the consumer would have coverage under his or her previous plan or coverage;

* * * * *

(iii) Loses pregnancy-related coverage described under section 1902(a)(10)(A)(i)(IV) and (a)(10)(A)(ii)(IX) of the Act (42 U.S.C. 1396a(a)(10)(A)(i)(IV), (a)(10)(A)(ii)(IX)). The date of the loss of coverage is the last day the consumer would have pregnancy-related coverage; or

* * * * *

(2) * * *

(ii) At the option of the Exchange, the enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.

(3) The qualified individual, or his or her dependent, becomes newly eligible for enrollment in a QHP through the Exchange because he or she newly satisfies the requirements under § 155.305(a)(1) or (2);

* * * * *

(6) * * *

(iv) A qualified individual who was previously ineligible for advance payments of the premium tax credit solely because of a household income below 100 percent of the FPL and who, during the same timeframe, was ineligible for Medicaid because he or she was living in a non-Medicaid expansion State, who either experiences a change in household income or moves to a different State resulting in the qualified individual becoming newly eligible for advance payments of the premium tax credit;

(7) The qualified individual or enrollee, or his or her dependent, gains access to new QHPs as a result of a permanent move and either—

(i) Had minimum essential coverage as described in 26 CFR 1.5000A–1(b) for one or more days during the 60 days preceding the date of the permanent move, or

(ii) Was living outside of the United States or in a United States territory at the time of the permanent move;

(8) The qualified individual—

(i) Who gains or maintains status as an Indian, as defined by section 4 of the Indian Health Care Improvement Act, may enroll in a QHP or change from one QHP to another one time per month; or

(ii) Who is or becomes a dependent of an Indian, as defined by section 4 of the Indian Health Care Improvement Act and is enrolled or is enrolling in a QHP

through an Exchange on the same application as the Indian, may change from one QHP to another one time per month, at the same time as the Indian;

(9) The qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide;

(10) A qualified individual or enrollee—

(i) Is a victim of domestic abuse or spousal abandonment, as defined by 26 CFR 1.36B–2T, as amended, including a dependent or unmarried victim within a household, is enrolled in minimum essential coverage and seeks to enroll in coverage separate from the perpetrator of the abuse or abandonment; or

(ii) Is a dependent of a victim of domestic abuse or spousal abandonment, on the same application as the victim, may enroll in coverage at the same time as the victim;

(11) A qualified individual or dependent—

(i) Applies for coverage on the Exchange during the annual open enrollment period or due to a qualifying event, is assessed by the Exchange as potentially eligible for Medicaid or the Children's Health Insurance Program (CHIP), and is determined ineligible for Medicaid or CHIP by the State Medicaid or CHIP agency either after open enrollment has ended or more than 60 days after the qualifying event; or

(ii) Applies for coverage at the State Medicaid or CHIP agency during the annual open enrollment period, and is determined ineligible for Medicaid or CHIP after open enrollment has ended;

(12) The qualified individual or enrollee, or his or her dependent, adequately demonstrates to the Exchange that a material error related to plan benefits, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a QHP through the Exchange; or

(13) At the option of the Exchange, the qualified individual provides satisfactory documentary evidence to verify his or her eligibility for an insurance affordability program or enrollment in a QHP through the Exchange following termination of Exchange enrollment due to a failure to verify such status within the time period specified in § 155.315 or is under 100 percent of the Federal poverty level and did not enroll in coverage while waiting for HHS to verify his or her citizenship, status as a national, or lawful presence.

■ 29. Section 155.430 is amended by revising paragraph (b)(2)(iii) to read as follows:

§ 155.430 Termination of Exchange enrollment or coverage.

* * * * *

(b) * * *

(2) * * *

(iii) The enrollee's coverage is rescinded in accordance with § 147.128 of this subchapter, after a QHP issuer demonstrates, to the reasonable satisfaction of the Exchange, if required by the Exchange, that the rescission is appropriate;

* * * * *

■ 30. Section 155.505 is amended by adding paragraph (h) to read as follows:

§ 155.505 General eligibility appeals requirements.

* * * * *

(h) *Electronic requirements.* If the Exchange appeals entity cannot fulfill the electronic requirements of subparts C, D, F, and H of this part related to acceptance of telephone- or Internet-based appeal requests, the provision of appeals notices electronically, or the secure electronic transfer of eligibility and appeal records between appeals entities and Exchanges or Medicaid or CHIP agencies, the Exchange appeals entity may fulfill those requirements that it cannot fulfill electronically using a secure and expedient paper-based process.

■ 31. Section 155.555 is amended by revising paragraph (b) to read as follows:

§ 155.555 Employer appeals process.

* * * * *

(b) *Exchange employer appeals process.* An Exchange may establish an employer appeals process in accordance with the requirements of this section and §§ 155.505(f) through (h) and 155.510(a)(1) and (2) and (c). Where an Exchange has not established an employer appeals process, HHS will provide an employer appeals process that meets the requirements of this section and §§ 155.505(f) through (h) and 155.510(a)(1) and (2) and (c).

* * * * *

■ 32. Section 155.725 is amended by revising paragraphs (g)(1) and (2) and (j)(2)(i) to read as follows:

§ 155.725 Enrollment periods under SHOP.

* * * * *

(g) * * *

(1) In a State Exchange that does not use the Federal platform for SHOP functions, the following rules apply with respect to enrollment and coverage effective dates for newly qualified employees.

(i) The SHOP must provide an employee who becomes a qualified employee outside of the initial or annual open enrollment period an enrollment period beginning on the first day of becoming a qualified employee. A newly qualified employee must have at least 30 days from the beginning of his or her enrollment period to select a QHP. The enrollment period must end no sooner than 15 days prior to the date that any applicable employee waiting period longer than 45 days would end if the employee made a plan selection on the first day of becoming eligible.

(ii) The effective date of coverage for a QHP selection received by the SHOP from a newly qualified employee must always be the first day of a month, and must generally be determined in accordance with paragraph (h) of this section, unless the employee is subject to a waiting period consistent with § 147.116 of this subchapter, in which case the effective date may be on the first day of a later month, but in no case may the effective date fail to comply with § 147.116 of this subchapter.

(iii) Waiting periods in the SHOP are calculated beginning on the date the employee becomes a qualified employee who is otherwise eligible for coverage, regardless of when a qualified employer notifies the SHOP about a newly qualified employee.

(2) In a Federally-facilitated SHOP or in a State Exchange that uses the Federal platform for SHOP functions, the following rules apply with respect to enrollment and coverage effective dates for newly qualified employees.

(i) The SHOP must provide an employee who becomes a qualified employee outside of the initial or annual open enrollment period with a 30-day enrollment period beginning on the date the qualified employer notifies the SHOP about the newly qualified employee. Qualified employers must notify the SHOP about a newly qualified employee on or before the thirtieth day after the day that the employee becomes a newly qualified employee.

(ii) The effective date of coverage for a QHP selection received by the SHOP from a newly qualified employee is the first day of the month following plan selection, unless the employee is subject to a waiting period consistent with § 147.116 of this subchapter and paragraph (g)(2)(iii) of this section, in which case the effective date will be on the first day of the month following the end of the waiting period, but in no case may the effective date fail to comply with § 147.116 of this subchapter. If a newly qualified employee's waiting period ends on the first day of a month and the employee has already made a

plan selection by that date, coverage must take effect on that date. If a newly qualified employee makes a plan selection on the first day of a month and any applicable waiting period has ended by that date, coverage must be effective on the first day of the following month. If a qualified employer with variable hour employees makes regularly having a specified number of hours of service per period, or working full-time, a condition of employee eligibility for coverage offered through the SHOP, any measurement period that the qualified employer elects to use under § 147.116(c)(3)(i) to determine whether an employee meets the applicable eligibility conditions with respect to coverage offered through the SHOP must not exceed 10 months, beginning on any date between the employee's start date and the first day of the first calendar month following the employee's start date.

(iii) Waiting periods in the SHOP are calculated beginning on the date the employee becomes a qualified employee who is otherwise eligible for coverage, regardless of when a qualified employer notifies the SHOP about a newly qualified employee, and must not exceed 60 days in length. Waiting periods must be 0, 15, 30, 45 or 60 days in length.

* * * * *

(j) * * *

(2) * * *

(i) Experiences an event described in § 155.420(d)(1) (other than paragraph (d)(1)(ii)), or experiences an event described in § 155.420(d)(2), (4), (5), (7), (8), (9), (10), (11), or (12);

* * * * *

■ 33. Section 155.740 is amended by revising paragraph (b)(2) to read as follows:

§ 155.740 SHOP employer and employee eligibility appeals requirements.

* * * * *

(b) * * *

(2) The appeals entity must conduct appeals in accordance with the requirements established in this section and §§ 155.505(e) through (h) and 155.510(a)(1) and (2) and (c).

* * * * *

■ 34. Section 155.1090 is added to subpart K to read as follows:

§ 155.1090 Request for reconsideration.

(a) *Request for reconsideration of denial of certification specific to a Federally-facilitated Exchange*—(1) *Request for reconsideration.* The Federally-facilitated Exchanges will permit an issuer that has submitted a complete application to a Federally-facilitated Exchange for certification of a health plan as a QHP and is denied certification to request reconsideration of such action.

(2) *Form and manner of request.* An issuer submitting a request for reconsideration under paragraph (a)(1) of this section must submit a written request for reconsideration to HHS, in the form and manner specified by HHS, within 7 calendar days of the date of the written notice of denial of certification. The issuer must include any and all documentation the issuer wishes to provide in support of its request with its request for reconsideration.

(3) *HHS reconsideration decision.* HHS will provide the issuer with a written notice of the reconsideration decision. The decision will constitute HHS's final determination.

(b) [Reserved]

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 35. The authority citation for part 156 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301–1304, 1311–1313, 1321–1322, 1324, 1334, 1342–1343, 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701).

■ 36. Section 156.80 is amended by—

■ a. Revising paragraph (d)(1);

■ b. Redesignating paragraph (d)(3) as paragraph (d)(4);

■ c. Adding new paragraph (d)(3); and

■ d. Revising newly redesignated paragraph (d)(4).

The revisions read as follows:

§ 156.80 Single risk pool.

* * * * *

(d) * * *

(1) *In general.* A health insurance issuer must establish an index rate that is effective January 1 of each calendar year for a State market described in paragraphs (a) through (c) of this section.

(i) The index rate must be based on the total combined claims costs for providing essential health benefits within the single risk pool of that State market.

(ii) The index rate must be adjusted on a market-wide basis for the State based on the total expected market-wide payments and charges under the risk adjustment program and Exchange user fees (expected to be remitted under § 156.50(b) or (c) and (d) as applicable, plus the dollar amount under § 156.50(d)(3)(i) and (ii) expected to be credited against user fees payable for that State market).

(iii) The premium rate for all of the health insurance issuer's plans in the relevant State market must use the applicable market-wide adjusted index rate, subject only to the plan-level adjustments permitted in paragraph (d)(2) of this section.

* * * * *

(3) *Calibration.* The issuer must calibrate the plan-adjusted index rate for its plans within the single risk pool to correspond to an age rating factor of 1.0, a geographic rating factor of 1.0, and a tobacco use rating factor of 1.0, in a manner specified by the Secretary in guidance, to ensure that any rating variation under § 147.102 of this subchapter may be accurately applied with respect to a particular plan or coverage. The calibration must be applied uniformly to all plans within the single risk pool of the State market and cannot vary by plan.

(4) *Frequency of index rate and plan-level adjustments.* (i) A health insurance issuer may not establish an index rate and make the market-wide adjustments pursuant to paragraph (d)(1) of this section, make the plan-level adjustments pursuant to paragraph (d)(2) of this section, or calibrate the plan-adjusted index rate for its plans pursuant to paragraph (d)(3) of this section more or less frequently than annually, except as provided in paragraph (d)(4)(ii) of this section.

(ii) A health insurance issuer in the small group market (not including a merged market) may establish index rates and make the marketwide adjustments under paragraph (d)(1) of this section, make the plan-level adjustments under paragraph (d)(2) of this section, and calibrate the plan-adjusted index rate for its plans pursuant to paragraph (d)(3) of this section, no more frequently than quarterly. Any changes to rates must have effective dates of January 1, April 1, July 1, or October 1. Such rates may only apply to coverage issued or renewed on or after the rate effective date and will apply for the entire plan year of the group health plan.

* * * * *

■ 37. Section 156.140 is amended by revising paragraph (c) to read as follows:

§ 156.140 Levels of coverage.

* * * * *

(c) *De minimis variation.* The allowable variation in the AV of a health plan that does not result in a material difference in the true dollar value of the health plan is ±2 percentage points, except if a health plan under paragraph

(b)(1) of this section (a bronze health plan) either covers and pays for at least one major service, other than preventive services, before the deductible or meets the requirements to be a high deductible health plan within the meaning of 26 U.S.C. 223(c)(2), in which case the allowable variation in AV for such plan is −2 percentage points and +5 percentage points.

■ 38. Section 156.200 is amended by revising paragraphs (c)(1) and (g) introductory text to read as follows:

§ 156.200 QHP issuer participation standards.

* * * * *

(c) * * *

(1) At least one QHP in the silver coverage level and at least one QHP in the gold coverage level as described in § 156.140 throughout each service area in which it offers coverage through the Exchange; and,

* * * * *

(g) *Certification standard specific to a Federally-facilitated Exchange for plan years beginning before January 1, 2018.* A Federally-facilitated Exchange may certify a QHP in the individual market of a Federally-facilitated Exchange only if the QHP issuer meets one of the conditions below:

* * * * *

■ 39. Section 156.235 is amended by revising paragraphs (a)(2)(i) and (b)(2)(i) to read as follows:

§ 156.235 Essential community providers.

(a) * * *

(2) * * *

(i) The network includes as participating practitioners at least a minimum percentage, as specified by HHS, of available essential community providers in each plan's service area. Multiple providers at a single location will count as a single essential community provider toward both the available essential community providers in the plan's service area and the issuer's satisfaction of the essential community provider participation standard; and

* * * * *

(b) * * *

(2) * * *

(i) The number of its providers that are located in Health Professional Shortage Areas or five-digit zip codes in which 30 percent or more of the population falls below 200 percent of the Federal poverty level satisfies a minimum percentage, specified by HHS, of available essential community providers in the plan's service area. Multiple providers at a single location will count as a single essential community provider toward both the available essential community providers in the plan's service area and the issuer's satisfaction of the essential community provider participation standard; and

* * * * *

■ 40. Section 156.265 is amended by:

■ a. Removing the word ''and'' at the end of paragraph (b)(3)(ii);

■ b. Removing the period at the end of paragraph (b)(3)(iii) and adding ''; and'' in its place; and

■ c. Adding paragraph (b)(3)(iv).

The addition reads as follows:

§ 156.265 Enrollment process for qualified individuals.

* * * * *

(b) * * *

(3) * * *

(iv) Differentially display all standardized options in accordance with the requirements under § 155.205(b)(1) in a manner consistent with that adopted by HHS for display on the Federally-facilitated Exchange Web site, unless HHS approves a deviation.

* * * * *

■ 41. Section 156.272 is added to read as follows:

§ 156.272 Issuer participation for the full plan year.

(a) An issuer offering a QHP through an individual market Exchange must make the QHP available for enrollment through the Exchange for the full plan year for which the plan was certified, including to eligible enrollees during limited open enrollment periods, unless a basis for suppression under § 156.815 applies.

(b) Unless a basis for suppression under § 156.815 applies, an issuer offering a QHP through a SHOP must make the QHP available for enrollment through the SHOP for the full plan year for which the QHP was certified.

(c) An issuer offering a QHP through a Federally-facilitated Exchange or a Federally-facilitated SHOP that does not comply with paragraph (a) or (b) of this section may, at the discretion of HHS, be precluded from offering QHPs in a Federally-facilitated Exchange or Federally-facilitated SHOP for up to the two succeeding plan years.

■ 42. Section 156.290 is amended by revising the section heading and paragraphs (a) introductory text and (b) to read as follows:

§ 156.290 Non-certification and decertification of QHPs.

(a) *Non-certification for a subsequent, consecutive certification cycle.* If a QHP issuer elects not to seek certification for a subsequent, consecutive certification cycle with the Exchange, the QHP issuer, at a minimum, must—

* * * * *

(b) *Notice of QHP non-availability.* When, for a subsequent, consecutive certification cycle, a QHP issuer elects not to seek certification with the Exchange, or the Exchange denies certification of a QHP, the QHP issuer must provide written notice to each enrollee in the form and manner specified by the Secretary under § 147.106 of this subchapter.

* * * * *

■ 43. Section 156.350 is amended by revising paragraph (a)(2) and adding paragraph (a)(4) to read as follows:

§ 156.350 Eligibility and enrollment standards for Qualified Health Plan issuers on State-based Exchanges on the Federal platform.

(a) * * *

(2) Section 156.285(c)(5) and (c)(8)(iii) regarding the enrollment process for SHOP; and

* * * * *

(4) Section 156.265(d) of this subchapter regarding binder payments and premium payment deadlines.

* * * * *

■ 44. Section 156.430 is amended by adding paragraph (h) to read as follows:

§ 156.430 Payment for cost-sharing reductions.

* * * * *

(h) *Reconciliation of the cost-sharing reduction portion of advance payments discrepancies and appeals.* (1) If an issuer reports a discrepancy and seeks to dispute the notification of the amount of reconciliation of the cost-sharing reduction portion of advance payments, it must report the discrepancy to HHS within 30 calendar days of notification of the amount of reconciliation of the cost-sharing reduction portion of advance payments as described in paragraph (e) of this section, in the manner set forth by HHS.

(2) An issuer may appeal the amount of reconciliation of the cost-sharing reduction portion of advance payments, under the process set forth in § 156.1220.

■ 45. Section 156.505 is amended by revising the definitions of ''Pre-existing issuer'' and ''Representative'' to read as follows:

§ 156.505 Definitions.

* * * * *

Pre-existing issuer means a health insurance issuer licensed by a State regulator that marketed individual or group health insurance benefit plans

(other than Medicare or Medicaid Managed Care plans) on July 16, 2009.

* * * * *

Representative means an officer, director, or trustee of an organization, or group of organizations; or a senior executive or high-level representative of the Federal government, or a State or local government or a sub-unit thereof.

* * * * *

■ 46. Section 156.515 is amended by revising paragraphs (b)(1)(i) through (v) and (b)(2)(i), (ii), (iii), and (v) to read as follows:

§ 156.515 CO–OP standards.

* * * * *

(b) * * *

(1) * * *

(i) The CO–OP must be governed by an operational board with a majority of directors elected by a majority vote of a quorum of the CO–OP's members that are age 18 or older;

(ii) All members age 18 or older must be eligible to vote for each of the directors on the organization's operational board subject to a vote of the members under paragraph (b)(1)(i) of this section;

(iii) Each member age 18 or older must have one vote in each election for each director subject to a vote of the members under paragraph (b)(1)(i) of this section in that election;

(iv) The first elected directors of the organization's operational board must be elected no later than one year after the effective date on which the organization provides coverage to its first member; the entire operational board must be elected or in place, and in full compliance with paragraph (b)(1)(i) of this section, no later than two years after the same date;

(v) Elections of the directors on the organization's operational board subject to a vote of the members under paragraph (b)(1)(i) of this section must be contested so that the total number of candidates for contested seats on the operational board exceeds the number of contested seats for such directors, except in cases where a seat is vacated mid- term due to death, resignation, or removal.

(2) * * *

(i) Each director must meet ethical, conflict-of-interest, and disclosure standards;

(ii) Each director has one vote;

(iii) Positions on the board of directors may be designated for individuals with specialized expertise, experience, or affiliation (for example, providers, employers, and unions); and

* * * * *

(v) *Limitation on government and issuer participation.* No representative of any Federal, State or local government (or of any political subdivision or instrumentality thereof) and no representative of any organization described in § 156.510(b)(1)(i) (in the case of a representative of a State or local government or organization described in § 156.510(b)(1)(i), with respect to a State in which the CO–OP issues policies), may serve on the CO–OP's formation board or as a director on the organization's operational board.

* * * * *

■ 47. Section 156.715 is amended by adding paragraph (f) to read as follows:

§ 156.715 Compliance reviews of QHP issuer in Federally-facilitated Exchanges.

* * * * *

(f) *Failure to comply.* A QHP issuer that fails to comply with a compliance review under this section may be subject to enforcement remedies under subpart I of this part.

■ 48. Section 156.1220 is amended by—

■ a. Removing the word ''or'' at the end of paragraph (a)(1)(v);

■ b. Removing the period at the end of paragraph (a)(1)(vi) and adding a semicolon in its place;

■ c. Adding paragraphs (a)(1)(vii) and (viii); and

■ d. Revising paragraphs (a)(2), (a)(3)(ii), (a)(3)(v) and (a)(4)(ii).

The revisions and additions read as follows:

§ 156.1220 Administrative appeals.

(a) * * *

(1) * * *

(vii) The findings of a second validation audit as a result of risk adjustment data validation with respect to risk adjustment data for the 2016 benefit year and beyond; or

(viii) The calculation of a risk score error rate as a result of risk adjustment data validation with respect to risk adjustment data for the 2016 benefit year and beyond.

(2) *Materiality threshold.* Notwithstanding paragraph (a)(1) of this section, an issuer may file a request for reconsideration under this section only if the amount in dispute under paragraph (a)(1)(i) through (viii) of this section, as applicable, is equal to or exceeds 1 percent of the applicable payment or charge listed in such paragraphs (a)(1)(i) through (viii) of this section payable to or due from the issuer for the benefit year, or $10,000, whichever is less.

(3) * * *

(ii) For a risk adjustment payment or charge, including an assessment of risk adjustment user fees, the findings of a second validation audit, or the calculation of a risk score error rate as a result of risk adjustment data validation, within 30 calendar days of the date of the notification under § 153.310(e) of this subchapter;

* * * * *

(v) For reconciliation of the cost-sharing reduction portion of advance payments, within 60 calendar days of the date of the cost-sharing reduction reconciliation discrepancy resolution decision; and

* * * * *

(4) * * *

(ii) Notwithstanding paragraph (a)(1) of this section, a reconsideration with respect to a processing error by HHS, HHS's incorrect application of the relevant methodology, or HHS's mathematical error may be requested only if, to the extent the issue could have been previously identified, the issuer notified HHS of the dispute through the applicable process for reporting a discrepancy set forth in §§ 153.630(d)(2), 153.710(d)(2), and 156.430(h)(1) of this subchapter, it was so identified and remains unresolved.

* * * * *

■ 49. Section 156.1230 is amended by adding paragraphs (b)(1), (2), and (3) to read as follows:

§ 156.1230 Direct enrollment with the QHP issuer in a manner considered to be through the Exchange.

* * * * *

(b) * * *

(1) HHS may immediately suspend the QHP issuer's ability to transact information with the Exchange if HHS discovers circumstances that pose unacceptable risk to Exchange operations or Exchange information technology systems until the incident or breach is remedied or sufficiently mitigated to HHS's satisfaction.

(2) The QHP issuer must demonstrate operational readiness and compliance with applicable requirements prior to the QHP issuer's Internet Web site being used to complete a QHP selection.

(3) The QHP issuer must provide consumers with correct information, without omission of material fact, regarding the Federally-facilitated Exchanges, QHPs offered through the Federally-facilitated Exchanges, and insurance affordability programs, and refrain from marketing or conduct that is misleading (including by having a direct enrollment Web site that HHS determines could mislead a consumer into believing they are visiting *HealthCare.gov*), coercive, or discriminates based on race, color, national origin, disability, age, sex, gender identity, or sexual orientation.

■ 50. Section 156.1256 is revised to read as follows:

§ 156.1256 Other notices.

As directed by a Federally-facilitated Exchange, a health insurance issuer that is offering QHP coverage through a Federally-facilitated Exchange or a State-based Exchange on the Federal platform must notify its enrollees of material plan or benefit display errors and the enrollees' eligibility for a special enrollment period, included in § 155.420(d)(12) of this subchapter, within 30 calendar days after being notified by a Federally-facilitated Exchange that the error has been fixed, if directed to do so by a Federally-facilitated Exchange.

PART 157—EMPLOYER INTERACTIONS WITH EXCHANGES AND SHOP PARTICIPATION

■ 51. The authority citation for part 157 continues to read as follows:

Authority: Title I of the Affordable Care Act, Sections 1311, 1312, 1321, 1411, 1412, Pub. L. 111–148, 124 Stat. 199.

■ 52. Section 157.205 is amended by revising paragraphs (e)(1) and (f)(1) to read as follows:

§ 157.205 Qualified employer participation process in a SHOP.

* * * * *

(e) * * *

(1) An enrollment period to seek coverage in a QHP in accordance with § 155.725(g) of this subchapter; and

* * * * *

(f) * * *

(1) Newly eligible dependents and newly qualified employees. In a Federally-facilitated SHOP or in a State Exchange that uses the Federal platform for SHOP functions, a qualified employer must provide information about a newly qualified employee on or before the thirtieth day after the day that the employee becomes a newly qualified employee; and

* * * * *

PART 158—ISSUER USE OF PREMIUM REVENUE: REPORTING AND REBATE REQUIREMENTS

■ 53. The authority citation for part 158 continues to read as follows:

Authority: Section 2718 of the Public Health Service Act (42 U.S.C. 300gg–18), as amended.

■ 54. Section 158.121 is revised to read as follows:

§ 158.121 Newer experience.

If, for any aggregation as defined in § 158.120, 50 percent or more of the total earned premium for an MLR reporting year is attributable to policies newly issued in that MLR reporting year, then the experience of these policies may be excluded from the report required under § 158.110 for that same MLR reporting year. If an issuer chooses to defer reporting of newer business as provided in this section, then the excluded experience must be added to the experience reported in the following MLR reporting year.

■ 55. Section 158.232 is amended by revising paragraphs (d)(1) and (2) and (e)(1) and (2), and adding paragraph (f) to read as follows:

§ 158.232 Calculating the credibility adjustment.

* * * * *

(d) * * *

(1) Each year in the aggregation included experience of at least 1,000 life-years; and

(2) The issuer's preliminary MLR, as defined under paragraph (f) of this section, for each year in the aggregation was below the applicable MLR standard, as established under §§ 158.210 and 158.211.

(e) * * *

(1) Each year in the aggregation included experience of at least 1,000 life-years; and

(2) The issuer's preliminary MLR, as defined under paragraph (f) of this section, for each year in the aggregation was below the applicable MLR standard, as established under §§ 158.210 and 158.211.

(f) *Preliminary MLR.* Preliminary MLR means the ratio of the numerator, as defined in § 158.221(b) and calculated as of March 31st of the year following the year for which the MLR report required in § 158.110 is being submitted, to the denominator, as defined in § 158.221(c), calculated using only a single year of experience, and without applying any credibility adjustment.

■ 56. Section 158.240 is amended by—

■ a. Revising paragraph (c)(1);

■ b. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively;

■ c. Adding a new paragraph (d); and

■ d. Amending newly redesignated paragraph (f) by removing the reference ''paragraph (d) of this section'' each time it appears and adding in its place the reference ''paragraph (e) of this section''.

The revision and addition read as follows:

§ 158.240 Rebating premium if the applicable medical loss ratio standard is not met.

* * * * *

(c) * * *

(1) For each MLR reporting year, an issuer must rebate to the enrollee, subject to paragraph (d) of this section, the total amount of premium revenue, as defined in § 158.130, received by the issuer from the enrollee, after subtracting Federal and State taxes and licensing and regulatory fees as provided in §§ 158.161(a) and 158.162(a)(1) and (b)(1), and after accounting for payments or receipts for risk adjustment, risk corridors, and reinsurance as provided in § 158.130(b)(5), multiplied by the difference between the MLR required by § 158.210 or § 158.211, and the issuer's MLR as calculated under § 158.221.

* * * * *

(d) *Limitation on total rebate payable for each year in the aggregation.* For any State and market, an issuer may elect to limit the amount of rebate payable for the MLR reporting year to the issuer's total outstanding rebate liability with respect to all years included in the aggregation. If an issuer elects this option, the outstanding rebate liability with respect to a specific year in the aggregation must be calculated by multiplying the denominator with respect to that year, as defined in § 158.221(c), by the difference between the MLR required by § 158.210 or § 158.211 for the MLR reporting year, and the sum of the issuer's preliminary MLR for that year, as defined under § 158.232(f), and the credibility adjustment applicable to the current MLR reporting year. The outstanding rebate liability with respect to a specific year must be reduced by any rebate payments applied against it in prior MLR reporting years. A rebate paid for an MLR reporting year must be applied first to reduce the outstanding rebate liability with respect to the earliest year in the aggregation.

* * * * *

Dated: November 28, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: December 12, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–30433 Filed 12–16–16; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL REGISTER

Vol. 81 Thursday,

No. 246 December 22, 2016

Part IV

Department of the Treasury

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 1, 4, 5, et al.

Amendments To Streamline Importation of Distilled Spirits, Wine, Beer, Malt Beverages, Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes and Facilitate Use of the International Trade Data System; Final Rule

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 1, 4, 5, 7, 26, 27, and 41

[Docket No. TTB–2016–0004; T.D. TTB–145; Ref: Notice No. 159]

RIN 1513–AC15

Amendments To Streamline Importation of Distilled Spirits, Wine, Beer, Malt Beverages, Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes and Facilitate Use of the International Trade Data System

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: In this document, the Alcohol and Tobacco Tax and Trade Bureau is amending its regulations governing the importation of distilled spirits, wine, beer and malt beverages, tobacco products, processed tobacco, and cigarette papers and tubes. The amendments in this document clarify and streamline import procedures, and support the implementation of the International Trade Data System and the filing of import information electronically. The amendments include providing the option for importers to file import-related data electronically when filing entry or entry summary data electronically with U.S. Customs and Border Protection (CBP), as an alternative to current TTB requirements that importers submit paper documents to CBP upon importation.

DATES: This final rule is effective December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Jesse Longbrake, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone (202) 453–1039, extension 066.

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I. Background

A. TTB Authority

The Alcohol and Tobacco Tax and Trade Bureau (TTB) of the Department of the Treasury regulates, among other things, the importation of distilled spirits, wine, and malt beverages [1] pursuant to the Federal Alcohol Administration Act (FAA Act). TTB also administers the provisions of the Internal Revenue Code of 1986, as amended (IRC), with respect to the taxation of distilled spirits, wine, beer,[2] tobacco products, processed tobacco, and cigarette papers and tubes. These statutory provisions are the basis of TTB regulations that require importers to submit certain information upon importation.

Section 103(a) of the FAA Act (27 U.S.C. 203(a)) requires that a person obtain a permit before engaging in certain activities related to distilled spirits, wine, and malt beverages, including importation. This section of the FAA Act states that it shall be unlawful, except pursuant to a ''basic permit'' issued by the Secretary of the Treasury (the Secretary), to engage in the business of importing into the United States distilled spirits, wine, or malt beverages. Section 103(a) of the FAA Act also states that it is unlawful, except pursuant to a basic permit, for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported. The terms ''distilled spirits'' and ''wine,'' when used in the context of the FAA Act, apply only to distilled spirits and wine for nonindustrial use.

Additionally, section 105(e) of the FAA Act (27 U.S.C. 205(e)) authorizes the Secretary to prescribe regulations relating to the packaging, marking, branding, labeling, and size and fill of containers of distilled spirits, wine, and malt beverages. With regard to imported commodities, the FAA Act provides that no person shall remove from customs custody, in bottles, for sale or any other commercial purpose, distilled spirits, wine, or malt beverages, without having obtained a certificate of label approval (COLA) and being in possession of that COLA.

Chapter 51 of the IRC pertains to the taxation and regulation of distilled spirits (including spirits used for both beverage and nonbeverage purposes), wine, and beer (see 26 U.S.C. chapter 51). The IRC imposes a Federal excise tax on all distilled spirits, wine, and beer manufactured in or imported into the United States. See, respectively, 26 U.S.C. 5001, 5041, and 5051. Section 7652 (26 U.S.C. 7652) imposes a tax on distilled spirits, wine, and beer brought into the United States from Puerto Rico and the U.S. Virgin Islands. The tax is equal to the internal revenue tax imposed on like commodities produced in the United States.

In general, the tax on distilled spirits, wine, and beer either imported from foreign countries or brought into the United States from the U.S. Virgin Islands is collected by U.S. Customs and Border Protection (CBP), along with any import duties. Puerto Rico is within the customs territory of the United States, and, as a result, shipments of such products from Puerto Rico do not pass through customs custody when brought into the United States. Furthermore, Puerto Rico is part of the United States for purposes of the FAA Act. See 27 U.S.C. 211(a)(1). This rule primarily addresses amendments to the TTB regulations to facilitate the electronic filing of information with CBP, and, as a result, distilled spirits, wine, and beer brought into the United States from Puerto Rico are not addressed in this document.

The IRC provides that, under limited circumstances, products may be withdrawn from customs custody without payment of tax for transfer to the bonded premises of an industry member regulated by TTB. Proprietors of distilled spirits plants must apply for and receive notice of a registration before commencing operations in the United States. See 26 U.S.C. 5171. Proprietors of bonded wine cellars must also apply for and receive permission to operate before commencing operations

[1] The FAA Act defines ''malt beverage'' as ''a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.'' See 27 U.S.C. 211(a)(7). Throughout this document, the term ''malt beverage'' is used in reference to the FAA Act or regulations promulgated thereunder.

[2] The IRC defines ''beer'' as ''beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.'' See 26 U.S.C. 5052(a). Throughout this document, the term ''beer'' is used in reference to the IRC or regulations promulgated thereunder.

in the United States. See 26 U.S.C. 5351. Brewers must file a notice before commencing business as a brewer in the United States. See 26 U.S.C. 5401. TTB assigns a registry number, referred to in this document as the ''IRC registry number,'' to each such distilled spirits plant, bonded wine cellar, and brewery at which operations are to be conducted. The IRC registry number issued to distilled spirits plants has been historically referred to as the ''distilled spirits plant number.''

Under sections 5232, 5364, and 5418 of the IRC (26 U.S.C. 5232, 5364, and 5418), distilled spirits may be imported in bulk and released from customs custody without payment of excise tax for transfer in bond to a distilled spirits plant; natural wine (as defined in 26 U.S.C. 5381) may be imported in bulk and released from customs custody without payment of excise tax for transfer in bond to a bonded wine cellar; and beer may be imported in bulk and released from customs custody without payment of excise tax for transfer in bond to a brewery. Under these circumstances, the proprietor of the bonded premises becomes liable for the tax on the product upon its release from customs custody, and the applicable tax is collected by TTB when the product is removed from the distilled spirits plant, bonded wine cellar, or brewery, respectively.

The IRC also contains provisions under which imported distilled spirits may be entered free of tax by the United States or any governmental agency of the United States for nonbeverage purposes. See 26 U.S.C. 5313; 5314(b). Furthermore, industrial alcohol may under certain circumstances be brought into the United States free of tax from the U.S. Virgin Islands by qualified industrial alcohol users. See 26 U.S.C. 5314(b).

Chapter 52 of the IRC contains excise tax and related provisions pertaining to tobacco products and cigarette papers and tubes. Section 5701 of the IRC (26 U.S.C. 5701) imposes Federal excise tax on such commodities manufactured in or imported into the United States. Section 7652 (26 U.S.C. 7652) imposes a tax on tobacco products and cigarette papers and tubes brought into the United States from Puerto Rico and the U.S. Virgin Islands. The tax is equal to the internal revenue tax imposed on like commodities produced in the United States. Such commodities brought into the United States from Puerto Rico are not addressed in this document.

In general, the tax on tobacco products and cigarette papers and tubes either imported from foreign countries or brought into the United States from the U.S. Virgin Islands is collected by CBP, along with any import duties. Under 26 U.S.C. 5704, imported tobacco products and cigarette papers and tubes may be released from customs custody without payment of tax for delivery to the proprietor of an export warehouse [3] or to a manufacturer of tobacco products or cigarette papers and tubes if such commodities are not put up in packages, in accordance with such regulations and under such bond as the Secretary shall prescribe. See 26 U.S.C. 5704(c). Imported tobacco products and cigarette papers and tubes previously exported and returned may be released from customs custody without payment of tax for delivery to the original manufacturer or to an export warehouse proprietor authorized by such manufacturer to receive the commodities, in accordance with such regulations and under such bond as the Secretary shall prescribe. See 26 U.S.C. 5704(d).

Chapter 52 of the IRC also contains provisions pertaining to the manufacture and importation of processed tobacco, which is not subject to tax. Section 5712 of the IRC (26 U.S.C. 5712) requires that importers of tobacco products or processed tobacco, before engaging in such businesses, apply for and obtain a permit.

TTB administers the FAA Act and chapters 51 and 52 of the IRC pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Department Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these provisions. Responsibility for collecting the excise taxes incident to the importation of distilled spirits, wines, beer, tobacco products, and cigarette papers and tubes is vested by statute with the Secretary of the Treasury. See 26 U.S.C. 7801. TTB regulations provide that such taxes are collected, accounted for, and deposited as internal revenue collections by CBP in accordance with CBP requirements. See 27 CFR 27.48 and 41.62. Under the authority of the Homeland Security Act of 2002, see 6 U.S.C. 212 and 215(1), the Secretary has delegated these customs revenue functions to the Secretary of Homeland Security. See Treasury Department Order 100–16, 68 FR 28322 (May 23, 2003).

TTB has authority under section 2(d) of the FAA Act, Public Law 74–401 (1935) ''to prescribe such rules and regulations as may be necessary to carry out [its] powers and duties'' under the FAA Act. In addition, as previously mentioned, section 105(e) of the FAA Act (27 U.S.C. 205(e)), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. Section 7805(a) of the IRC (26 U.S.C. 7805(a)) provides the general authority to the Secretary to issue regulations to carry out the provisions of the IRC.

The TTB regulations that implement the basic permit requirements of the FAA Act are set forth in part 1 of title 27 of the Code of Federal Regulations (27 CFR part I).

The TTB regulations that implement the labeling provisions of the FAA Act, as they relate to wine, distilled spirits, and malt beverages, are set forth in 27 CFR part 4, Labeling and Advertising of Wine (27 CFR part 4); 27 CFR part 5, Labeling and Advertising of Distilled Spirits (27 CFR part 5); and 27 CFR part 7, Labeling and Advertising of Malt Beverages (27 CFR part 7). For imported alcohol beverages specifically, these regulations include several requirements related to certification by a foreign government of the origin and, in some cases, age, vintage date, or method of production of the alcohol beverage.

Regulations implementing the importation-related provisions of chapter 51 of the IRC are found in 27 CFR part 27. Specifically, this part contains procedural and substantive requirements that apply to the importation of distilled spirits, wine, and beer into the United States from foreign countries, including requirements related to recordkeeping and reporting. Regulations implementing the IRC as it applies to distilled spirits, wine, and beer brought into the United States from Puerto Rico or the U.S. Virgin Islands are found in 27 CFR part 26.[4]

Regulations implementing the importation-related provisions of chapter 52 of the IRC are found in 27 CFR part 41. Specifically, this part governs the importation of tobacco products, cigarette papers and tubes,

[3] Under the IRC at 26 U.S.C. 5702(h), an export warehouse is a bonded internal revenue warehouse for the storage of tobacco products or cigarette papers or tubes or any processed tobacco, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the U.S. Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

[4] 27 CFR part 26 also contains regulations applicable to articles, which are generally defined in § 26.11 as preparations unfit for beverage use. Such articles are not within the scope of this rulemaking.

and processed tobacco, including requirements related to permits, recordkeeping, and reporting. Part 41 includes provisions applicable to such commodities brought into the United States from Puerto Rico or the U.S. Virgin Islands.

B. The International Trade Data System

The International Trade Data System (ITDS) is an interagency program to establish an electronic ''single window'' through which importers and exporters may submit electronically the data required by Federal government agencies for clearing imports or exports. Section 405 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Pub. L. 109–347) mandates participation in ITDS by all agencies that require documentation for clearing or licensing the importation and exportation of cargo.

Currently, importers and exporters that are regulated by multiple agencies or that import or export commodities regulated by multiple agencies submit data to those agencies through various channels, often in paper form. Through the implementation of ITDS, data is submitted through CBP's Automated Broker Interface (ABI) to the Automated Commercial Environment (ACE), a CBP system, and then made available through ACE to each government agency. Accordingly, TTB is providing electronic filing options for information related to the importation of commodities regulated by TTB.

C. Executive Order 13659—Streamlining the Export/Import Process for America's Businesses

On February 19, 2014, the President issued Executive Order 13659, ''Streamlining the Export/Import Process for America's Businesses.'' [5] The Executive Order mandated that agencies be able to utilize ITDS by December 31, 2016. The Executive Order also directed Federal agencies that use ITDS to review their existing regulations for the import and export of goods to determine whether those regulations should be modified to implement ITDS, and if so, to initiate rulemaking to implement those modifications.

D. Electronic Submission of TTB-Required Information to CBP

The current TTB provisions applicable to imports include requirements that importers submit information or documentation at importation to CBP. That information can be submitted electronically pursuant to 27 CFR 73.40. That section provides that a regulated entity may satisfy any requirement in the TTB regulations to submit a form to another agency by submitting the form to that other agency by electronic means, as long as that agency provides for, and authorizes, the electronic submission of the form and any registration and other requirements to use the electronic submission functionality are met. In part 73, the term ''form'' includes any documentation required to be submitted. Section 73.40 was the result of amendments to the TTB regulations published in the **Federal Register** (79 FR 17029) on March 27, 2014, as a final rule, T.D. TTB–119, and it generally removes any regulatory barrier to the submission of documents to CBP electronically.

On August 7, 2015, TTB published in the **Federal Register** (80 FR 47558) a notice, ''Importation of Distilled Spirits, Wine, Beer, Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes; Availability of Pilot Program and Filing Instructions to Test the Collection of Import Data for Implementation of the International Trade Data System.'' In the notice, TTB announced a pilot program in which importers, CBP, and TTB would test, as part of the ITDS project, the electronic collection of TTB import data and the transfer of that data through ACE to TTB. Technical instructions on the submission of data using the TTB Partner Government Agency (PGA) Message Set provided in ACE were made available in ''ACE Filing Instructions for TTB-Regulated Commodities'' at Docket No. TTB–2016–0004 on *Regulations.gov* (*www.regulations.gov*). That document also appears on the CBP Web site at *www.cbp.gov.* On October 21, 2015, TTB also published on its Web site, *www.ttb.gov,* Industry Circular 2015–1, ''Automated Commercial Environment Pilot Program; Alternate Method for Participants to Fulfill TTB Requirements for Importation,'' to allow importers to test the usability and functionality of the TTB PGA Message Set, while still complying with regulatory requirements.

TTB notes that under these amended regulations, importers may elect not to file TTB data electronically, but may instead continue to submit paper documentation consistent with existing requirements.

II. Publication of Notice of Proposed Rulemaking

On June 21, 2016, TTB published in the **Federal Register** (81 FR 40404) a notice of proposed rulemaking, Notice No. 159, setting forth the proposed amendments to parts 1, 4, 5, 7, 26, 27, and 41 of the TTB regulations concerning the implementation of ITDS. Notice No. 159 and the comments received in response to that document may be viewed in their entirety within Docket No. TTB–2016–0004 at the *Regulations.gov* Web site (*www.regulations.gov*).

As described in Notice No. 159, TTB's general approach in the proposed regulations was to set forth new information submission requirements to better support administration and enforcement of the IRC and FAA Act with regard to imports, and require information to be submitted or made available through one of the following methods: (1) The electronic submission of TTB-required data along with the submission of the customs entry or entry summary, as appropriate; or (2) the retention and provision of information only upon specific request by TTB or CBP.

There are generally two methods of electronic submission of information: Electronic submission of data directly and electronic submission of documents as electronic images. In many instances, TTB has chosen the former, that is, to provide importers with the option to directly submit required data electronically. The regulations, however, also allow for the submission of certain paper documents as electronic images in some circumstances. In circumstances in which the amended regulations require that the importer make a document available to TTB or CBP upon request, the document may be submitted through ACE as an electronic image. Specifically, electronic images may be uploaded into ACE through the Document Imaging System (DIS) module. More information regarding the submission of data using the DIS module is available in the ''ACE Filing Instructions for TTB-Regulated Commodities'' at Docket No. TTB–2016–0004 on *Regulations.gov* (*www.regulations.gov*).

Notice No. 159 describes in detail the rationale for each proposed regulatory amendment. The principal regulatory amendments proposed in Notice No. 159 can be summarized as follows:

• *Filing of the FAA Act Basic Permit Number:* TTB proposed amendments to 27 CFR 1.58 to require that importers of alcohol beverages file their FAA Act basic permit number with CBP when filing TTB data electronically, and, regardless of the method of filing, to require that such importers make their basic permit available to TTB or CBP upon request. TTB also proposed

[5] See *https://www.whitehouse.gov/the-press-office/2014/02/19/executive-order-streamlining-exportimport-process-america-s-businesses.*

amendments to 27 CFR 26.202 removing the requirement that importers of alcohol beverages file a copy of their FAA Act basic permit with CBP at the port of entry when bringing such products into the United States from the U.S. Virgin Islands, and instead requiring that such importers file their basic permit number with the customs entry when filing TTB data electronically, and, regardless of the method of filing, make their basic permit available to TTB or CBP upon request.

• *Filing of a COLA Identification Number or COLA Documents:* TTB proposed amendments to 27 CFR 4.40, 5.51, and 7.31 allowing importers of alcohol beverages, when filing TTB data electronically, to file with the customs entry the TTB-assigned identification number of the COLA associated with bottled wine, distilled spirits, or malt beverages. TTB also proposed amendments to 27 CFR 26.314 and 27.204 to remove requirements, applicable to distinctive liquor bottles, for importers to provide a photograph of the bottle to CBP upon entry. The proposed regulations retained the current requirement that, if the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at time of entry.

• *Removal of Requirement for Certain Gin Statements of Process:* TTB proposed removing the regulatory requirement in 27 CFR 5.51(d) that a COLA covering labels for imported gin bearing the word ''distilled'' be accompanied by a statement of process. TTB notes that a requirement remains, pursuant to 27 CFR 5.33(g) and TTB guidance, that a statement of process be submitted to TTB as part of the application for a COLA covering labels on distilled gin products.[6] The amendment to the regulation clarifies that the statement of process is not submitted at importation along with the approved COLA.

• *Possession and Retention of Certificates of Age, Origin, or Identity Issued by Foreign Governments for Importations of Certain Wine and Distilled Spirits Products:* TTB proposed amendments to 27 CFR 4.45, 5.52, and 5.56 to clearly state that certain wine and distilled spirits are not eligible for release from customs custody, and no person may remove those products from customs custody, unless that person has obtained and is in possession of a certificate of age, origin, or identity, as applicable, from an official duly authorized by the appropriate foreign government. The certificate must be made available to TTB or CBP upon request. TTB proposed amending those regulatory sections and adding a new section, 27 CFR 4.53, to specify that the certificates must be retained and made available upon request for five years following importation.

• *Certification of Imported Vintage Wine:* TTB proposed amendments to 27 CFR 4.27 removing the requirement that the importer or bottler of imported vintage wine possess a specific certificate issued by a duly authorized official of the country of origin certifying that the wine meets various criteria related to the vintage wine and, instead, requiring that the importer or domestic bottler of wine be able to demonstrate upon request that the wine is entitled to be labeled with the vintage date. Other rules set forth in § 4.27 relating to the use of a vintage date on labels of imported wine remain unchanged.

• *Imported Natural Wine and Possession of Certificates:* TTB proposed amendments to 27 CFR 26.11 and 27.11 adding a definition of natural wine applicable to all of parts 26 and 27. TTB also proposed amendments to 27 CFR 4.43, 4.45, and 27.140 allowing importers and domestic bottlers to meet requirements related to natural wine certificates by having the applicable certificates in their possession, to be made available to TTB or CBP upon request. The proposed amendment to part 27 requires the certificates to be retained for three years, and the proposed amendment to part 4 requires the certificates to be retained for five years.

• *Removal of Requirement To Present CBP with Certificates of Nonstandard Fill for Wine and Distilled Spirits:* TTB proposed removing requirements at 27 CFR 4.46 and 5.53 that an importer present to CBP certification that wine or distilled spirits imported in containers not conforming to authorized standards of fill meet certain criteria showing that it is eligible for release. Review of such certification is performed by TTB when the importer submits to TTB the COLA application covering the products, and the proposal reflects TTB's view that the showing of certification to CBP is no longer necessary.

• *Removal of Requirements Concerning Liquor Bottles and Filing Certain Applications in Triplicate:* TTB proposed amendments to 27 CFR 26.316 and 27.206 clarifying that liquor bottles found to be deceptive by the appropriate TTB officer may not be brought into the United States. TTB proposed removing provisions in 27 CFR 26.318 and 26.208 requiring that applications for authorization to receive such bottles be filed in triplicate. TTB also proposed removing provisions in §§ 26.319, 26.331, 27.209, and 27.221 requiring that applications related to receipt of used liquor bottles and applications for alternate methods or procedures be filed in triplicate.

• *Filing of Data on Distilled Spirits, Wine, and Beer Imported or Brought into the United States From the U.S. Virgin Islands Subject to Tax:* TTB proposed amendments to 27 CFR 27.48 and 26.200 requiring that importers file with CBP and/or retain certain information identifying distilled spirits, wine, and beer imported or brought into the United States from the U.S. Virgin Islands subject to tax, as well as information identifying the importer and ultimate consignee of such products. Information retained would be required to be made available upon request to TTB or CBP. The proposed amendments also provide that any information provided to CBP to meet CBP requirements, and any supporting documentation must also be made available upon request to TTB or CBP.

• *Distilled Spirits to Which an Effective Tax Rate or Standard Effective Tax Rate Applies:* TTB proposed amendments to 27 CFR 27.76 and 27.77 removing the requirement that the importer submit the certificate of effective tax rate or the standard effective tax rate approval applicable to distilled spirits at entry or entry summary, and instead requiring that the importer have the certificate in its possession at the time of filing the entry summary and make it available upon request to TTB or CBP. In the case of distilled spirits withdrawn from customs custody without payment of tax for transfer to the bonded premises of a distilled spirits plant, the current requirement remains unchanged, which is that the importer must provide a copy of the certificate of effective tax rate or the standard effective tax rate approval to the proprietor of the distilled spirits plant.

• *Alcohol Beverages Imported or Brought into the United States From the U.S. Virgin Islands in Bulk:* TTB proposed amendments to 27 CFR 27.171 and 26.300 to set forth the general provisions related to bulk beer and

[6] At the time of publication of Notice No. 159, Industry Circular 2007–4, which addresses pre-COLA evaluation requirements, identified imported distilled gin as requiring the submission of a ''pre-import letter'' with the application for a COLA. Following publication of Notice No. 159, TTB issued updated pre-COLA evaluation requirements addressing distilled spirits products in guidance document TTB G 2016–3. Under both Industry Circular 2007–4 and TTB G 2016–3, as part of the application for a COLA, an importer of distilled gin must submit a pre-import letter detailing, among other things, the manufacturing process of distilled gin.

natural wine imported or brought into the United States from the Virgin Islands without payment of tax. The proposed amendments generally provide for the transfer of tax liability to the proprietor of the bonded wine cellar or bonded brewery receiving such bulk wine or beer, respectively. TTB also proposed amendments to 27 CFR 27.138, 27.172, 26.273a, and 26.301 to include transfer record requirements for bulk wine and beer released from customs custody without payment of tax, and to add specific information that is required to be captured in such records. Finally, TTB proposed various clarifying amendments in 27 CFR parts 26 and 27 relating to imports in bulk, including amendments to the definition of ''bulk container'' in 27 CFR 27.11 and 27 CFR 26.11.

• *Filing of Permit Number and Other Information for Industrial Alcohol Shipments to the United States From the U.S. Virgin Islands:* TTB proposed amendments to 27 CFR 26.292, 26.294, and 26.296 to provide for electronic filing of the consignee permit number and other information for tax-free industrial alcohol shipments to the United States from the U.S. Virgin Islands.

• *Filing of Permit Number and Data by Government Agencies Importing Distilled Spirits Free of Tax:* TTB proposed amendments to 27 CFR 27.183 and 27.284 to provide for electronic filing of the permit number of government agencies importing distilled spirits for nonbeverage purposes free of tax, and for electronic filing of other information associated with such imports. TTB also proposed to remove 27 CFR 27.185, as it describes customs processes and inspection related to the release of distilled spirits free of tax to government agencies. (As noted in Notice No. 159, TTB generally proposed to remove most references to actions that CBP will take at entry, and replace them, where appropriate, with text that clarifies the requirements that apply to the importer at entry.)

• *Certificate Covering Distilled Spirits, Wine, or Beer Brought into the United States From the U.S. Virgin Islands:* TTB proposed amendments to 27 CFR 26.205 and 26.260. Section 26.205 requires that every person bringing distilled spirits, wine, or beer into the United States from the U.S. Virgin Islands, except tourists, obtain a certificate in the English language from the manufacturer detailing certain information, such as the name and address of the consignee, the kind and brand name of the products, the quantity, and information upon which an effective tax rate is based. The proposed amendments no longer require this certificate to be filed with CBP at the time of entry summary, and instead provide that the information associated with the certificate must be maintained as a record by the importer and must be made available upon request to TTB or CBP. The proposed amendments also provide that for distilled spirits, natural wine, or beer withdrawn from customs custody without payment of tax, the importer must furnish a copy of the certificate described in § 26.205 to the proprietor of the distilled spirits plant, bonded wine cellar, or brewery receiving the products.

• *Clarification of Record Retention Requirements:* TTB proposed amendments to 27 CFR 26.276 and 27.137, which set forth recordkeeping requirements for all documents or copies of documents that support records required by parts 26 and 27. The proposed amendments clarify that the three-year record retention requirements in parts 26 and 27 are measured from the time of release from customs custody, and require that such records, which include information and supporting documentation filed with CBP pursuant to CBP requirements, be made available to TTB or CBP upon request.

• *Removal of Requirements for CBP to Gauge or Inspect:* TTB proposed removing various provisions in 27 CFR parts 26 and 27 that state that customs officers shall inspect or gauge shipments of alcohol before release.

• *Filing of Data for Importation of Tobacco Products Subject to Tax and Processed Tobacco:* TTB proposed amendments to 27 CFR 41.81 providing for electronic filing of data required for imports of tobacco products and cigarette papers and tubes subject to tax. The proposed amendments require that importers of tobacco products file information identifying the importer (including the TTB permit number for importers of tobacco products) and ultimate consignee, and further require that the importer retain the required information and supporting documentation, to be made available to TTB or CBP upon request. Similar provisions applicable to imports of processed tobacco were proposed at a new section 27 CFR 41.265. In both cases, the proposed regulations additionally provide that any information and supporting documentation required as part of the entry or entry summary by CBP for CBP purposes must be made available upon request to TTB. TTB also proposed amendments to 27 CFR 41.204, which concerns records and reports, to remove references to ''physical'' receipt and disposition of tobacco products. The proposed amendments require importers of tobacco products to account for all tobacco products released from customs custody under the importer's TTB permit, including receipt and disposition. Proposed § 41.204 would also require recordkeeping by importers of cigarette papers and tubes.

• *Filing of Data for Importation of Tobacco Products Without Payment of Tax:* TTB proposed amendments to 27 CFR 41.86, which addresses the release of tobacco products and cigarette papers and tubes from customs custody without payment of tax under internal revenue bond, to provide for electronic filing of data required for imports of such articles without payment of tax. While the current regulations require the filing of a paper form, TTB F 5200.11, the proposed amendments allow the data required on TTB F 5200.11 to be input directly into ACE. The proposed amendments additionally require the filing of the importer's TTB permit number (for tobacco products only) and the employer identification number (EIN) of the recipient of the tobacco products or cigarette papers and tubes, and require that the importer retain the required information and supporting documentation, to be made available to TTB or CBP upon request.

• *Entries for Warehousing:* TTB proposed amendments to 27 CFR 26.200, 27.45, and 27.48, and proposed a new section at 27 CFR 41.84, to incorporate statutory provisions, codified in the IRC at 26 U.S.C. 5061(a)(2) for distilled spirits, wine, and beer and at 26 U.S.C. 5703(b)(2) for tobacco products and cigarette papers and tubes, providing generally that tax is due on products entered for warehousing not later than the 14th day after the last day of the semimonthly period during which the products are removed from the first such warehouse.

Subject to certain clarifying changes described in the Discussion of Comments and Other Clarifying Changes sections below, TTB is finalizing the proposed amendments in this rulemaking.

III. Discussion of Comments

Comment Overview

TTB received seven comments in response to Notice No. 159, which included comments submitted by or on behalf of one customs brokers and several trade organizations: Portside Customs Service, Inc. (Portside Customs Service); the Comité lnterprofessionnel du Vin de Champagne (Comité Champagne); the Bureau National

Interprofessionnel du Cognac; the French Federation of Wine and Spirits Exporters (or ''Fédération des Exportateurs de Vins et Spiritueux de France''); the Distilled Spirits Council of the United States, Inc. (DISCUS); the National Association of Beverage Importers (NABI); and the National Association of Foreign-Trade Zones (NAFTZ).

Comments from the Comité Champagne, the French Federation of Wine and Spirits Exporters, DISCUS, and NABI expressed general support for the implementation of the electronic ''single window'' through which importers may submit electronically the data required by Federal government agencies for clearing imports. Each of these entities, along with the remaining commenters, also submitted requests for clarifications and/or changes to the regulatory amendments proposed in Notice No. 159.

Descriptions of the comments, along with TTB's responses, are organized by topic and set forth below.

Possession and Retention of Certificates of Age, Origin, or Identity Issued by Foreign Governments for Importations of Certain Wine and Distilled Spirits

Comment

Three commenters expressed concern over amendments to 27 CFR 4.45 and 27 CFR 5.52. The commenters generally express concern with any shift from a requirement that certificates of age, origin, and identity be submitted to CBP in order to obtain release from customs custody to a solely post-release review, viewing such a shift as weakening the implementation of the certificate requirements and encouraging non-compliance.

The current regulations at 27 CFR 4.45 and 27 CFR 5.52 contain requirements under which importers must possess certain certifications from duly authorized foreign officials in order for the labels of those beverages to bear certain designations. In general, paragraph (a) of § 4.45 addresses certificates of origin and identity for wine, which certify the identity of the wine and that the wine has been produced in compliance with the laws of the respective foreign government regulating the production of such wine for home consumption. Paragraphs (a) though (e) of § 5.52 set forth similar certificate of origin requirements for Scotch, Irish, and Canadian whiskies; brandy, Cognac, and rum; Tequila; other whiskies; and other distilled spirits, respectively. In some cases, the certificates must also address production practices or age statements.

Under current TTB regulations, the above certificates must generally accompany the wines or distilled spirits (or accompany the invoice applicable to such wines or distilled spirits). The amended regulations at 27 CFR 4.45(a) and 27 CFR 5.52(a) through (e) instead require the importer to have the certificate in its possession, to be made available to TTB or CBP upon request.

The Comité Champagne, which is the body authorized by the government of France to issue documents that certify that wines are produced according to Champagne appellation requirements, notes in its comment its belief that systematic controls of certificates of origin remain the most effective anti-counterfeit methods. Its comment further states that since Champagne certificates of origin are secured electronic documents, systematic controls would not create unnecessary burdens for importers or U.S. controllers.

With respect to the amendments to 27 CFR 5.52(b), the Bureau National Interprofessionnel du Cognac, which describes itself as the governing body entitled by French and EU Law to protect the geographical indication Cognac and represent and defend the interest of all the Cognac producers and trade houses, expresses concern that a shift from a systematic *pre-release* monitoring of certificates of age and origin to a potential post-release review may encourage noncompliance and eventually erode Cognac's status as a distinctive product of France under TTB's regulations. The Bureau National Interprofessionnel du Cognac requests retention of the requirement that the certificates required under § 5.52(b) accompany the shipment.

The French Federation of Wine and Spirits Exporters, which is a trade association representing the wine and spirit exporting companies of France, commented supporting the proposed requirement that the importer must possess the certificates required under 27 CFR 4.45 and 27 CFR 5.52, as opposed to the existing requirements that the certificate accompany the wines or distilled spirits when clearing CBP. However, the French Federation of Wine and Spirits Exporters notes its concern that a shift to a ''post release review on a random basis'' from a systematic control upon importation might weaken the implementation of these provisions, encourage non-compliance, and eventually result in weakening the level of protection afforded to the consumer under the present regulations. The French Federation of Wine and Spirits Exporters expresses its view that certificates required under §§ 4.45 and 5.52 must be issued with each single shipment, and properly reference the shipment information, so that a given certificate can be traced back to a single shipment. The French Federation of Wine and Spirits Exporters also encourages TTB to enforce post-entry review in a manner and at a frequency that will encourage compliance, and to enforce tough penalties for noncompliance, especially when there is suspicion or proof of fraud.

TTB response: As noted above, the current regulations at 27 CFR 4.45 and 27 CFR 5.52 contain certain requirements under which importers must possess certifications from duly authorized foreign officials that the wines or distilled spirits being imported have been produced using specific practices or in conformity with certain laws of the country of origin in order for the labels of those beverages to bear certain designations. Under current TTB regulations, such certificates must generally accompany the wines or distilled spirits (or accompany the invoice applicable to such wines or distilled spirits). The amended regulations at 27 CFR 4.45(a) and 27 CFR 5.52(a) through (e) instead require the importer to have the certificate in its possession, to be made available to TTB or CBP upon request. The amended regulations also require importers to retain these certificates for a period of five years.

TTB notes that the amendments to 27 CFR 4.45 and 5.52 are not intended to change in any way the eligibility requirements for wines or distilled spirits to be released from customs custody. Under the amended regulations, as under the current regulations, products requiring a certificate of age, origin, or identity may not enter the United States for consumption unless covered by such a certificate. CBP has the authority to examine such certificates prior to release, and the amended regulations do not in any way diminish this authority. Additionally, for electronic filers, the TTB PGA Message Set allows the importer to attest to the possession of certificates of age, origin, or identity at importation, where such certificates are required by regulation.

TTB exercises its authority to regulate beverage alcohol importers under the FAA Act in part through post-release review of compliance with requirements such as the certificate requirements of 27 CFR 4.45 and 5.52. This includes the review of documents that an importer is required to have in its possession at the time of the filing of the entry. As noted in Notice No. 159, TTB now has timely

access to importation information through ACE and has the ability to determine whether a certificate of age, origin, or identity is required for a certain product and whether a certificate is valid, including by requesting that the importer upload an image of the certificate through the Document Imaging System (DIS) module in ACE. Under the amended regulations, TTB will be able, through post-release review of the importation information, to determine whether the appropriate certificate of age, origin, or identity is in the possession of the importer. TTB's post-release review capabilities include the ability to reconcile certificates of age, origin, or identity with the specific shipments covered by those certificates. This approach supports compliance in a way that facilitates legitimate trade, expedites the release of compliant wines and distilled spirits from customs custody, and allows enforcement resources to be focused on identifying noncompliance and preventing future noncompliance by taking enforcement action against noncompliant actors.

Comment

Two commenters expressed concern over TTB's proposed amendments to 27 CFR 5.56. Under current regulation, 27 CFR 5.56 provides that distilled spirits imported in bulk for bottling in the United States may not be removed from the plant where bottled unless the bottler possesses the certificates of age and certificates of origin required under 27 CFR 5.52 for like spirits were they imported in bottles. The current § 5.56 provides that bottler must possess certificates ''which are similar to'' the certificates required under § 5.52. The amendment to § 5.56 proposed in Notice No. 159 would require that the bottler possess certificates which provide the ''same information'' as a certificate required under § 5.52 would provide for like spirits imported in bottles.

The French Federation of Wine and Spirits Exporters notes reservations about the proposed amendment to § 5.56, particularly concerning the potential meaning of the amendment. It states that if the proposed change results in certificates of age and origin being issued by an entity different from the authorized issuer (*e.g.,* the Bureau National Interprofessionnel du Cognac in the case of Cognac), the amendment would significantly weaken the trust and confidence that the U.S. consumer has in the integrity of the product. The Bureau National Interprofessionnel du Cognac notes similar concerns, and states that if the proposed change would allow entities other than the Bureau National Interprofessionnel du Cognac to issue certificates of age and certificates of origin for Cognac imported in bulk, it may affect the impact the authenticity, age, or quality of the Cognac sold in the United States and seriously damage the confidence of U.S. consumers in Cognac.

TTB response: The proposed amendment to § 5.56 was not intended to change the entities that may issue certificates of age, origin, or identity; rather, TTB intended to replace the reference to ''certificates which are similar to the certificates required under § 5.52'' with a more specific reference to the content of the certificates. TTB did not intend to imply that the certificates could be issued by an entity other than an official duly authorized by the appropriate foreign government. TTB understands the commenters' concerns regarding the potential ambiguity created by the proposed regulatory text. In the amended regulations finalized in this document, we have clarified that the certificates required under § 5.56 are those issued by an official duly authorized by the foreign government as set forth in § 5.52. TTB has further determined that the same ambiguity identified by the commenters may exist in the proposed new 27 CFR 4.53, and so has also clarified this issue in the § 4.53 regulatory text finalized in this document.

Comment

DISCUS requests that TTB adopt a single three-year recordkeeping retention requirement for all components of an entry filing, specifically noting that TTB has specified a record retention period of five years for certificates of age, origin, or identity, while other documents have a three-year record retention requirement.

TTB response: TTB has set forth a five–year record retention period for certificates of age, origin, or identity because the requirement for such certificates is promulgated under the FAA Act, and there is a five-year statute of limitations for criminal violations of the FAA Act. Specifically, the TTB regulations at 27 CFR 4.45, 27 CFR 4.53, 27 CFR 5.52, and 27 CFR 5.56 concerning certificates of age, origin, or identity implement labeling provisions of the FAA Act codified in the United States Code at 27 U.S.C. 205. Pursuant to the United States Code at 27 U.S.C. 207, violation of section 205 is a criminal offense.

While the FAA Act does not contain any specific recordkeeping requirements applicable to certificates of age, origin, or identity, such records are necessary to enforce the requirements of the FAA Act. See, *e.g., National Confectioners Ass'n* v. *Califano,* 569 F.2d 690, 693–94 (D.C. Cir. 1978), which upheld the U.S. Food and Drug Administration's authority to require records in the absence of a specific statutory requirement, where records were necessary to help in the efficient enforcement of the Federal Food, Drug and Cosmetic Act. Additionally, as noted above, TTB has authority under section 2(d) of the FAA Act, Public Law 74–401 (1935) ''to prescribe such rules and regulations as may be necessary to carry out [its] powers and duties'' under the FAA Act.

TTB further notes that the amended regulations do not require industry members to retain paper copies of each certificate; they may retain electronic copies of certificates.

Filing of a COLA Identification Number or COLA Documents by Importers of Alcohol Beverages

Comment

Portside Customs Service comments on the proposed amendments to 27 CFR 4.40, 5.51, and 7.31 which require that importers of alcohol beverages enter the COLA identification number for the COLA applicable to each wine, distilled spirit, or malt beverage included in a shipment. Portside Customs Services comments that requiring importers of alcohol beverages to enter a COLA identification number for each line of an import entry will require too much time for customs brokers to clear shipments or, alternatively, will result in customs brokers charging more for their services. Portside Customs Service requests that TTB remove this requirement.

TTB response: Section 105(e) of the FAA Act (27 U.S.C. 205(e)) sets forth labeling requirements and, with respect to imports, provides that no person shall remove from customs custody, in bottles, for sale or any other commercial purpose, distilled spirits, wine, or malt beverages, without having obtained and being in possession of a COLA covering the distilled spirits, wine, or malt beverages and issued by the Secretary of the Treasury.

To implement this requirement, TTB's regulations at 27 CFR 4.40, 5.51, and 7.31 currently state that no bottled wine, distilled spirits, or malt beverages, respectively, shall be released from customs custody for consumption unless an approved COLA covering the label of the product has been deposited with the appropriate customs officer at the port of entry. With an approved COLA, the brand or lot of wine, distilled spirits, or malt beverages bearing

approved labels may be released from customs custody.

As explained in Notice No. 159, TTB believes it is not necessary to require the importer to deposit a paper copy of the approved COLA upon importation when filing TTB data electronically. Each approved COLA has a number associated with it, and images of approved COLAs can be accessed by entering the COLA identification number into TTB's online database, the Public COLA Registry.[7] TTB is therefore amending §§ 4.40, 5.51, and 7.31 to require that, upon importation, the importer either file with the customs entry the TTB-assigned identification number of the COLA (when filing electronically), or provide a copy of the COLA to CBP. Accordingly, importers may satisfy the requirements of amended §§ 4.40, 5.51, and 7.31 by entering the COLA identification numbers applicable to an entry in the TTB PGA Message Set in ACE, or may continue the current practice of providing a copy of the COLA to CBP.

TTB believes that the amendments to §§ 4.40, 5.51, and 7.31 ultimately streamline the implementation of the FAA Act's COLA provisions, and provide options that can ease compliance burdens on industry members.

Comments

Two commenters suggest that TTB implement in ACE a method for importers to identify whether they are the holder of the COLA(s) applicable to an entry, or instead are authorized to import products covered by that COLA(s) by the entity to which the COLA is issued. In the case of an importer that is using another entity's COLA with authorization, the commenters request that TTB implement in ACE a method for importers to submit proof of that authorization to ensure that COLAs are used only by authorized entities. Both commenters frame their request in the specific context of ''direct import'' transactions.

DISCUS notes that the proposed amendments to 27 CFR 5.51 would provide that no person may remove bottled distilled spirits from customs custody unless the person ''has obtained and is in possession of a certificate of label approval (COLA).'' DISCUS explains that importers that are the holders of the COLA for a brand often will have imported product delivered directly to a domestic wholesaler; *i.e.,* a ''direct import.'' DISCUS notes that in direct import transactions, the domestic wholesaler often does not have in its possession the COLA applicable to the imported products. DISCUS requests that TTB implement in ACE a ''drop-down'' box where the wholesaler could indicate that it is in the possession of a letter from the importer authorizing the wholesaler's use of the importer's COLA, or submit such a letter. DISCUS states that this feature would provide all interested stakeholders with the confidence that only appropriate parties are clearing customs for the appropriate brands. DISCUS also states that requiring the person removing the product from customs custody to be in possession of the COLA could disrupt current supply chain dynamics and efficiencies, without any commensurate benefit.

NABI states that direct imports are a component of a secure supply chain, and encourages TTB to work with the importer and brokerage communities to assure that COLAs are only used by authorized partners in the international supply chain. NABI explains that direct import transactions involve beverage wholesalers acting as agents of authorized importers. NABI states that the authorized importer is the holder of the COLA and, in the case of a direct import by the importer's business partner, a letter of authorization is issued to facilitate the release of cargo from CBP. NABI concludes that these letters of authorization must be incorporated into ACE to assure that there is no interruption in CBP release of products.

TTB response: As noted above, the TTB regulations at 27 CFR 4.40, 5.51, and 7.31 currently state that no bottled wine, distilled spirits, or malt beverages, respectively, shall be released from customs custody for consumption unless an approved COLA covering the label of the product has been deposited with the appropriate customs officer at the port of entry. Pursuant to ATF Ruling 84–3, TTB has allowed, under certain specified circumstances, the use of a COLA by an importer that is not the importer to which the COLA was issued if: (1) The importer to which the COLA was issued has authorized such use, (2) each bottle or individual container bears the name (or trade name) and address of the importer to which the COLA was issued and (3) the importer to which the COLA was issued maintains records of the companies it has authorized to use its certificate. TTB notes that, under current regulations, an importer importing products using a COLA issued to another entity must possess the COLA to meet the requirement of §§ 4.40, 5.51, and 7.31 to deposit the COLA with the appropriate customs officer at the port of entry.

The amendments proposed in Notice No. 159 to §§ 4.40, 5.51, and 7.31 would provide, in pertinent part, that bottled wine, distilled spirits, or malt beverages, respectively, are not eligible for release from customs custody, and no person may remove such products from customs custody for consumption, unless ''the person removing the [products] has obtained and is in possession of a certificate of label approval (COLA)''. The proposed amendment would also require that any person removing such products from customs custody for consumption ''must first apply for and obtain a COLA covering the [products] from the appropriate TTB officer.''

TTB agrees that the proposed amendments to §§ 4.40, 5.51, and 7.31 failed to capture this practice, which was not TTB's intent. Accordingly, in the regulatory text finalized in this document, we have changed the amendments to §§ 4.40, 5.51, and 7.31 to clarify that bottled wine, distilled spirits, or malt beverages may be released to an importer who is authorized by a COLA holder to import products covered by the COLA. TTB notes that these amendments do not supersede ATF Ruling 84–3 or its holding that the COLA holder remains responsible for the imported product and its distribution in the United States.

Both commenters requested that TTB implement a method in ACE for a domestic wholesaler to indicate that it is in the possession of a letter from the importer authorizing the wholesaler's use of the importer's COLA, or submit such a letter, in order to ensure that only authorized entities are entering products subject to the COLA requirements.

TTB believes it is necessary to clarify certain facts related to this request. First, the provisions of §§ 4.40, 5.51, and 7.31 are applicable to the importer of the products, that is, the entity under whose FAA Act basic permit the products are released. Under the amended regulations, an importer filing electronically must file with CBP, at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA covering the label on the alcohol beverages being imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at time of entry. In neither scenario is a wholesaler to whom the products may ultimately be shipped required by TTB regulations to provide information or documentation for the products to be released. In general, a

[7] For the Public COLA Registry, see *https://www.ttbonline.gov/colasonline/publicSearchColasBasic.do.*

wholesaler is not required to submit information or documentation into ACE for the release of bottled wine, distilled spirits, or malt beverages unless that wholesaler is itself the importer.

Second, in situations where an importer imports products covered by a COLA issued to another entity (with the authorization of the entity to which the COLA was issued), there is no requirement in the TTB regulations that a COLA authorization letter be submitted to CBP in order for such products to be released. However, the amended regulations clarify that proof of such authorization must be made available to TTB or CBP upon request. Where an importer is authorized to import products covered by another importer's COLA, the importer importing the products must have a copy of the COLA, and as a result will also have the COLA identification number, either of which may be used to satisfy the initial release eligibility requirements of §§ 4.40, 5.51, and 7.31. If CBP or TTB requests that an importer submit proof of their authorization to use another person's COLA, any supporting documentation may be uploaded into ACE through the DIS module, or submitted in paper. More information regarding the submission of data using the DIS module is available in the ''ACE Filing Instructions for TTB-Regulated Commodities'' at Docket No. TTB–2016–0004 on *Regulations.gov* (*www.regulations.gov*).

TTB appreciates the commenters' input regarding the need to ensure that all alcohol beverages imported into the United States comply with the labeling provisions of the FAA Act. TTB is considering the enforcement efficacy of implementing an indicator in the TTB PGA Message Set through which importers would indicate that they are using a COLA held by another entity. If TTB determines that these steps would be valuable for purposes of enforcing §§ 4.40, 5.51, and 7.31, they will be proposed in a separate action.

Comments

Three commenters request that requests for waivers from the COLA requirement for imports for trade shows and/or sales samples be accepted electronically. DISCUS specifically requests that acceptance of such documents in ACE be allowed, as either an electronic document upload or as an electronic certification that the waiver is in the importer's possession. The French Federation of Wine and Spirits Exporters generally requests that electronic submission, or electronic certification of possession, be available for such documents. NABI suggests that TTB convert COLA waivers to electronic documents, or electronically stamp COLA waiver applications, so that COLA waivers may be submitted as digital documents along with documentation filed with CBP.

TTB response: TTB first notes that there is an exemption code in the TTB PGA Message Set for importers to indicate that a product is exempt from the COLA requirement under a waiver. Further, COLA waiver documents may be uploaded electronically into ACE through the DIS module.

With regard to the suggestions that TTB further streamline the way that it indicates authorization of a waiver, although that is outside the scope of the current rulemaking (as this rulemaking is directed at amending current regulations to provide for electronic submission of information to CBP or TTB upon import), TTB is considering further streamlining of the COLA waiver process, which may be addressed in a future rulemaking.

Reporting of Certain Required Information for Foreign-Trade Zone Related Entries

Comment

NAFTZ requests that, for foreign-trade zone (FTZ) related entries, the ''importer of record'' continue to be considered the consignee for purposes of reporting CBP and TTB information in ACE ''at the time of a Type 06 FTZ entry.''

TTB response: TTB first notes that a ''Type 06 FTZ entry'' refers to a withdrawal of products from an FTZ for consumption in the United States; this type of entry is an importation for purposes of TTB regulations. TTB also notes that ''importer of record'' is a term specific to CBP regulations and CBP forms; TTB regulations and requirements refer to the ''importer'' (which is specifically defined in parts 27 and 41), but not to the ''importer of record''. Accordingly, information submitted in ACE regarding the importer of record is required for purposes of fulfilling CBP requirements, and does not necessarily apply to TTB requirements.

Under the amended regulations, TTB requires electronic filers to supply information via the TTB PGA Message Set regarding the importer of products which are subject to TTB regulation. For purposes of the TTB PGA Message Set, the ''importer'' refers to the individual or entity identified as the importer in the corresponding TTB regulations and possessing the applicable TTB permit (which TTB will refer to here as the ''TTB importer''). Generally, the amended regulations require that electronic filers supply information such as the TTB importer's TTB permit number, address, and employer identification number. The amended regulations also require that electronic filers identify the name and address of the ultimate consignee of the imported products in the TTB PGA Message Set. The ultimate consignee is the person to whom the products being imported are shipped. Depending on the individual circumstances of a transaction, the TTB importer may be the same entity as the importer of record reported to CBP.

IV. Other Clarifying Changes

In addition to the clarifying changes described in the Discussion of Comments section above, the regulatory amendments finalized in this document incorporate additional changes to 27 CFR 26.276, 27.137, and 26.292. As proposed in Notice No. 159, amended §§ 26.276 and 27.137 set forth record retention requirements for all records required by parts 26 and 27, respectively, and documents or copies of documents that support such records (including data filed with CBP pursuant to CBP requirements). Under the proposed regulations, and those finalized in this document, all such records and supporting documents are required to be retained in accordance with TTB recordkeeping requirements and made available to TTB or CBP upon request. TTB is adding in this final rule cross references in §§ 26.276 and 27.137 to recordkeeping and retention regulations issued by CBP, as such CBP regulations may affect the same records.

Section 26.292 relates to shipments of industrial spirits or specially denatured spirits brought into the United States from the U.S. Virgin Islands. As proposed in Notice No. 159, amended § 26.292 would require, when filing electronically, the consignor or consignee to file with CBP the number associated with the consignee's permit issued under 27 CFR part 20 (for shipments of specially denatured spirits) or 27 CFR part 22 (for shipments of industrial spirits), along with the customs entry. TTB is clarifying in this final rule that it is the importer filing the entry that must file the number associated with the consignee's permit.

V. Regulatory Analyses and Notices

A. Executive Order 12866

It has been determined that this rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory impact assessment is not required.

B. Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), TTB certifies that this final rule will not have a significant economic impact on a substantial number of small entities. While TTB believes the majority of businesses subject to this rule are small businesses, the regulatory amendments in this document will not have a significant impact on those small entities. Electronic filing will not be required under the changes. For entities filing on paper, the changes generally only require that certain additional information must be kept as a record. Furthermore, the majority of changes that TTB is making in this document will provide importers with more predictability regarding the data required at importation, and the electronic filing option will allow importers to more easily provide information required to import alcohol and tobacco products. This will facilitate the movement of the commodities from the port of entry into U.S. commerce, and reduce the possibility of cargo being delayed at the port. As small entities typically have fewer resources than large entities to devote to regulatory compliance and logistics, these benefits may have a disproportionately positive effect for small entities.

In addition, these changes will allow importers the option to provide data required by the U.S. government in order to clear their imported goods through a single window, rather than the current practice of filling out separate forms for commodities subject to regulation by multiple Federal agencies.

The changes in this document can be divided into three classes with respect to their impact on entities: (1) Providing an electronic filing alternative to requirements to submit paper documents to U.S. Customs and Border Protection (CBP) as part of the customs entry or entry summary filing; (2) replacing reporting requirements with recordkeeping requirements, under which the importer must make documents available upon request; and (3) adding some filing requirements. An example of the electronic filing alternative is the change to address the certificate of label approval (COLA) for alcohol beverages. Current regulations require that the COLA be ''deposited with'' CBP before the alcohol beverages covered by the COLA are released from customs custody. TTB is instead requiring that importers that file TTB data electronically input the number of the COLA with the filing of the customs entry. Electronic filing provides a non-paper alternative to submitting information. It is likely that such an alternative will be welcomed by importers that prefer to file electronically, as including paper documents in shipments is likely more burdensome than submitting data electronically. Paper COLAs will continue to be required from importers that do not file TTB data electronically.

Examples of replacing reporting with recordkeeping are the changes to address foreign certificates, which include certificates of age and origin for certain distilled spirits; certification of origin and identity for certain wine; and certification of proper cellar treatment of natural wine. In general, current regulations require that the foreign certificate ''accompany'' the importation. TTB will instead require that the importer obtain the certificate prior to importation and make it available only upon request by CBP or TTB. If filing TTB data electronically, at the filing of the entry, the importer must certify that it has complied and will comply with these conditions. The burden of including paper documents in shipments is being removed for both electronic and paper filers in these instances.

Examples of requiring new information are the requirements that importers that import alcohol or tobacco products subject to tax, and file TTB data electronically, must provide at entry or entry summary: The importer's TTB permit number; the importer's EIN; the name and address of the ultimate consignee; the quantity of each product; and information identifying each product for IRC and/or FAA Act purposes. Importers that do not file electronically will be required to maintain records of the information to be made available upon request. TTB believes that the impact of this change will be minimal because much of this information is already submitted to CBP for CBP purposes.

In conclusion, while the entities affected by the amendments include a substantial number of small entities, the effects of the changes in this final rule in general, and in particular the provision of electronic filing alternatives and the replacement of reporting requirements with recordkeeping requirements, are expected to be positive for the affected entities. The amendments generally provide additional options for complying with import requirements and allow importers that prefer filing electronically to meet TTB requirements through electronic means.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), TTB certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, TTB submitted the notice of proposed rulemaking (Notice No. 159, 81 FR 40404, June 21, 2016) to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment on the impact of these regulations. The SBA had no comment on the proposed rule.

C. Paperwork Reduction Act

Regulations addressed in this document contain current collections of information that have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)) and assigned control numbers 1513–0020, 1513–0025, 1513–0056, 1513–0059, 1513–0062, 1513–0064, 1513–0088, 1513–0106, and 1513–0119. The specific regulatory sections in this rule that contain collections of information, either current or amended, are §§ 1.58, 4.27, 4.40, 4.45, 4.53, 4.70, 5.45, 5.51, 5.52, 5.56, 7.31, 26.200, 26.205, 26.273a, 26.276, 26.292, 26.294, 26.296, 26.301, 26.302, 26.314, 26.318, 26.319, 26.331, 27.48, 27.76, 27.77, 27.137, 27.138, 27.140, 27.172, 27.204, 27.208, 27.209, 27.221, 41.81, 41.86, 41.204, and 41.265. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

In conjunction with Notice No. 159, TTB submitted revisions to OMB control numbers 1513–0064, 1513–0056, 1513–0059, 1513–0062, 1513–0088, and 1513–0119 to OMB for review. Those revisions generally account for the regulatory amendments proposed in Notice No. 159 and finalized in this document. The revisions and their connections to the proposed regulatory amendments are described in detail in Notice No. 159, which also solicited comments regarding the information collection revisions. TTB received no comments in response to the revisions, and the revisions have now been approved by OMB.

Following the revisions described in Notice No. 159, TTB submitted one clarifying revision to OMB control number 1513–0064 to OMB for approval. The amended regulations at §§ 4.40, 5.51, and 7.31 clarify that, if an importer is importing distilled spirits, wine, or malt beverages using another person's COLA, with the COLA holder's authorization, the importer must make proof of that authorization available to TTB or CBP upon request. While the estimated burden hours for OMB control number 1513–0064 put forth in Notice No. 159 did capture the submission of proof of a COLA holder's authorization, TTB did not specifically explain that this collection of information was being accounted for by OMB control number 1513–0064. TTB submitted a revision to OMB control number 1513–0064 to include that explanation, and TTB has received approval for that revision.

D. Administrative Procedures Act

TTB finds good cause under 5 U.S.C. 553(d)(3) to dispense with the effective date limitation in 5 U.S.C. 553(d). A 30-day delayed effective date is unnecessary because the regulatory changes in this final rule that provide an electronic filing alternative to paper filing are optional. Further, a delay in the applicability of the new recordkeeping provisions contained in this final rule is unnecessary because TTB provided notice of these requirements on June 21, 2016 through Notice No. 159 (81 FR 40404). Notice No. 159 explained that Executive Order 13659, ''Streamlining the Export/Import Process for America's Businesses'' mandated that agencies be able to utilize ITDS by December 31, 2016. The effective date of this final rule is December 31, 2016, in accordance with the Executive Order.

List of Subjects

27 CFR Part 1

Administrative practice and procedure, Alcohol and alcoholic beverages, Imports, Liquors, Packaging and containers, Warehouses, Wine.

27 CFR Part 4

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Food additives, Imports, International agreements, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Food additives, Grains, Imports, International agreements, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Alcohol and alcoholic beverages, Beer, Customs duties and inspection, Food additives, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin Initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

27 CFR Part 41

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

Amendments to the Regulations

For the reasons discussed above in the preamble, TTB is amending 27 CFR parts 1, 4, 5, 7, 26, 27, and 41 as follows:

PART 1—BASIC PERMIT REQUIREMENTS UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT, NONINDUSTRIAL USE OF DISTILLED SPIRITS AND WINE, BULK SALES AND BOTTLING OF DISTILLED SPIRITS

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

Authority: 27 U.S.C. 203, 204, 206, 211 unless otherwise noted.

■ 2. Section 1.10 is amended by adding a definition of ''Malt beverage'' in alphabetical order to read as follows:

§ 1.10 Meaning of terms.

* * * * *

Malt beverage. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption. Standards applying to the use of processing methods and flavors in malt beverage production appear in § 7.11 of this chapter.

* * * * *

■ 3. Section 1.58 is revised to read as follows:

§ 1.58 Filing of permits.

Every person receiving a basic permit under the provisions of this part must maintain the permit at the place of business covered by the permit and make it available upon the request of the appropriate TTB officer. Every person required to obtain a basic permit as an importer under § 1.20 must, when importing distilled spirits, wine, or malt beverages under that permit and filing TTB data electronically, file the number of the permit with U.S. Customs and Border Protection (CBP) along with the filing of the customs entry. Regardless of the method of filing, every importer must make the permit available upon request by the appropriate TTB officer or a customs officer.

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205, unless otherwise noted.

■ 5. Section 4.10 is amended by adding a definition of ''Customs officer'' in alphabetical order to read as follows:

§ 4.10 Meaning of terms.

* * * * *

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

* * * * *

■ 6. Section 4.27 is amended by revising paragraph (c)(3) to read as follows:

§ 4.27 Vintage wine.

* * * * *

(c) * * *

(3) The wine is of the vintage shown, the laws of the country of origin regulate the appearance of vintage dates upon the labels of wine produced for consumption within the country of origin, the wine has been produced in conformity with those laws, and the wine would be entitled to bear the

vintage date if it had been sold within the country of origin. The importer of the wine imported in bottles or the domestic bottler of wine imported in bulk and bottled in the United States must be able to demonstrate, upon request by the appropriate TTB officer or a customs officer, that the wine is entitled to be labeled with the vintage date.

■ 7. Section 4.40 is amended by:
■ a. Revising paragraph (a);
■ b. Removing and reserving paragraph (b); and
■ c. Adding an Office of Management and Budget control number reference at the end of the section.

The revision and addition read as follows:

§ 4.40 Label approval and release.

(a) *Certificate of label approval.* Wine, imported in containers, is not eligible for release from customs custody for consumption, and no person may remove such wine from customs custody for consumption, unless the person removing the wine has obtained and is in possession of a certificate of label approval (COLA) and the containers bear labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by the form. Any person removing wine in containers from customs custody for consumption must first apply for and obtain a COLA covering the wine from the appropriate TTB officer, or obtain authorization to use the COLA from the person to whom the COLA is issued. Products imported under another person's COLA are eligible for release only if each bottle or individual container to be imported bears the name (or trade name) and address of the person to whom the COLA was issued by TTB, and only if the importer using the COLA to obtain release of a shipment can substantiate that the person to whom the COLA was issued has authorized its use by the importer. If filing electronically, the importer must file with U.S. Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned number of the valid COLA that corresponds to the label on the brand or lot of wine to be imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at time of entry. In addition, the importer must provide a copy of the applicable COLA, and proof of the COLA holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer. The COLA requirement imposed by this section applies only to wine that is removed for sale or any other commercial purpose. See 27 CFR 27.49, 27.74 and 27.75 for labeling exemptions applicable to certain imported samples of wine.

* * * * *

(Approved by the Office of Management and Budget under control numbers 1513–0020 and 1513–0064)

■ 8. Section 4.45 is amended by revising paragraph (a) and adding paragraph (c) and an Office of Management and Budget control number reference at the end of the section to read as follows:

§ 4.45 Certificates of origin, identity and proper cellar treatment.

(a) *Certificate of origin and identity.* Wine imported in containers is not eligible for release from customs custody for consumption, and no person may remove such wine from customs custody for consumption, unless that person has obtained, and is in possession of an invoice accompanied by a certificate of origin issued by the appropriate foreign government if that country requires the issuance of such a certificate for wine exported from that country. The certificate must have been issued by an official duly authorized by the foreign government, and it must certify as to the identity of the wine and that the wine has been produced in compliance with the laws of the foreign country regulating the production of the wine for home consumption.

* * * * *

(c) *Retention of certificates.* The importer of wine imported in containers must retain for five years following the date of the removal of the bottled wine from customs custody copies of the certificates (and accompanying invoices, if required) required by paragraphs (a) and (b) of this section, and must provide them upon request of the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control numbers 1513–0064 and 1513–0119)

§ 4.46 [Removed]

■ 9. Section 4.46 is removed.

■ 10. Section 4.53 is added to read as follows:

§ 4.53 Retention of certificates.

Wine that would be required under § 4.45 to be covered by a certificate of origin and identity and/or a certification of proper cellar treatment and that is imported in bulk for bottling in the United States may be removed for consumption from the premises where bottled only if the bottler possesses a certificate of origin and identity and/or a certification of proper cellar treatment of natural wine applicable to the wine, issued by the appropriate entity as set forth in §§ 4.45 and 27.140 of this chapter respectively, that provides the same information as a certificate required under § 4.45(a) and (b) would provide for like wine imported in bottles. The bottler of wine imported in bulk must retain for five years following the removal of such wine from the bonded wine cellar where bottled copies of the certificates required by § 4.45(a) and (b), and must provide them upon request of the appropriate TTB officer.

(Approved by the Office of Management and Budget under control number 1513–0064)

■ 11. Section 4.70 is amended by:
■ a. In paragraph (b)(3), removing the word ''or'' following the semicolon;
■ b. Redesignating paragraph (b)(4) as paragraph (b)(5);
■ c. Adding new paragraph (b)(4); and
■ d. Adding an Office of Management and Budget control number reference at the end of the section.

The additions read as follows:

§ 4.70 Application.

* * * * *

(b) * * *

(4) Imported wine bottled or packed before January 1, 1979, and certified as to such in a statement, available to the appropriate TTB officer upon request, signed by an official duly authorized by the appropriate foreign government; or

* * * * *

(Approved by the Office of Management and Budget under control number 1513–0064)

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

■ 12. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

■ 13. Section 5.11 is amended by adding a definition of ''Customs officer'' in alphabetical order to read as follows:

§ 5.11 Meaning of terms.

* * * * *

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

* * * * *

■ 14. Section 5.45 is revised to read as follows:

§ 5.45 Application.

(a) Except as provided in paragraph (b) of this section, no person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or

through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein or remove from customs custody any distilled spirits in bottles unless such distilled spirits are bottled and packed in conformity with §§ 5.46 through 5.47a.

(b) Section 5.47a does not apply to:

(1) Imported distilled spirits in the original containers in which entered into Customs custody on or before December 31, 1979 (or on or before June 30, 1989 in the case of distilled spirits imported in 500 mL containers); or

(2) Imported distilled spirits bottled or packed prior to January 1, 1980 (or prior to July 1, 1989 in the case of distilled spirits in 500 mL containers) and certified as to such in a statement signed by an official duly authorized by the appropriate foreign government.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

(Approved by the Office of Management and Budget under control number 1513–0064)

§ 5.47a [Amended]

■ 15. Section 5.47a is amended in paragraph (d) by removing the parenthetical sentence at the end of the paragraph.

■ 16. Section 5.51 is amended by:

■ a. Revising paragraph (a);

■ b. Removing and reserving paragraphs (b) and (d); and

■ c. Adding an Office of Management and Budget control number reference at the end of the section.

The revision and addition read as follows:

§ 5.51 Label approval and release.

(a) *Certificate of label approval.* Distilled spirits, imported in bottles, are not eligible for release from customs custody for consumption, and no person may remove such distilled spirits from customs custody for consumption, unless the person removing the distilled spirits has obtained and is in possession of a certificate of label approval (COLA) and the bottles bear labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by the form. Any person removing distilled spirits in bottles from customs custody for consumption must first apply for and obtain a COLA covering the distilled spirits from the appropriate TTB officer, or obtain authorization to use the COLA from the person to whom the COLA is issued. Products imported under another person's COLA are eligible for release only if each bottle or individual container to be imported bears the name (or trade name) and address of the person to whom the COLA was issued by TTB, and only if the importer using the COLA to obtain release of a shipment can substantiate that the person to whom the COLA was issued has authorized its use by the importer. If filing electronically, the importer must file with U.S. Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA that corresponds to the label on the brand or lot of distilled spirits to be imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at time of entry. In addition, the importer must provide a copy of the applicable COLA, and proof of the COLA holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer. The COLA requirement imposed by this section applies only to distilled spirits that are removed for sale or any other commercial purpose. See 27 CFR 27.49, 27.74 and 27.75 for labeling exemptions applicable to certain imported samples of distilled spirits.

* * * * *

(Approved by the Office of Management and Budget under control numbers 1513–0020 and 1513–0064)

■ 17. Section 5.52 is amended by:

■ a. Revising paragraphs (a), (b), (c), (d) introductory text, and (e);

■ b. Adding paragraph (f); and

■ c. Adding an Office of Management and Budget control number reference at the end of the section.

The revisions and additions read as follows:

§ 5.52 Certificates of age and origin.

(a) *Scotch, Irish, and Canadian whiskies.* (1) Scotch, Irish, and Canadian whiskies, imported in bottles, are not eligible for release from customs custody for consumption, and no person may remove such whiskies from customs custody for consumption, unless that person has obtained and is in possession of an invoice accompanied by a certificate of origin issued by an official duly authorized by the British, Irish, or Canadian Government, certifying:

(i) That the particular distilled spirits are Scotch, Irish, or Canadian whisky, as the case may be;

(ii) That the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of whisky for home consumption; and

(iii) That the product conforms to the requirements of the Immature Spirits Act of such foreign governments for spirits intended for home consumption.

(2) In addition, an official duly authorized by the appropriate foreign government must certify to the age of the youngest distilled spirits in the bottle. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers.

(b) *Brandy, Cognac, and rum.* Brandy (other than fruit brandies of a type not customarily stored in oak containers) or Cognac, imported in bottles, is not eligible for release from customs custody for consumption, and no person may remove such brandy or Cognac from customs custody for consumption, unless the person so removing the brandy or Cognac possesses a certificate issued by an official duly authorized by the appropriate foreign country certifying that the age of the youngest brandy or Cognac in the bottle is not less than two years, or if age is stated on the label that none of the distilled spirits are of an age less than that stated. Rum imported in bottles that contain any statement of age is not eligible to be released from customs custody for consumption, and no person may remove such rum from customs custody for consumption, unless the person so removing the rum possesses a certificate issued by an official duly authorized by the appropriate foreign country, certifying to the age of the youngest rum in the bottle. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers. If the label of any fruit brandy, not stored in oak containers, bears any statement of storage in another type of container, the brandy is not eligible for release from customs custody for consumption, and no person may remove such brandy from customs custody for consumption, unless the person so removing the brandy possesses a certificate issued by an official duly authorized by the appropriate foreign government certifying to such storage. Cognac, imported in bottles, is not eligible for release from customs custody for consumption, and no person may remove such Cognac from customs custody for consumption, unless the person so removing the Cognac possesses a certificate issued by an official duly authorized by the French Government, certifying that the product is grape brandy distilled in the Cognac region of France and entitled to be designated as ''Cognac'' by the laws and regulations of the French Government.

(c) *Tequila.* (1) Tequila imported in bottles is not eligible for release from

customs custody for consumption, and no person may remove such Tequila from customs custody for consumption, unless the person removing such Tequila possesses a certificate issued by an official duly authorized by the Mexican Government stating that the product is entitled to be designated as Tequila under the applicable laws and regulations of the Mexican Government.

(2) If the label of any Tequila imported in bottles contains any statement of age, the Tequila is not eligible for release from customs custody for consumption, and no person may remove such Tequila from customs custody for consumption, unless the person removing the Tequila possesses a certificate issued by an official duly authorized by the Mexican Government as to the age of the youngest Tequila in the bottle. The age certified shall be the period during which the Tequila has been stored in oak containers after distillation and before bottling.

(d) *Other whiskies.* Whisky, as defined in § 5.22(b)(1), (4), (5), and (6), imported in bottles, is not eligible for release from customs custody for consumption, and no person shall remove such whiskies from customs custody for consumption, unless that person has obtained and is in possession of a certificate issued by an official duly authorized by the appropriate foreign government certifying:

* * * * *

(e) *Miscellaneous.* Distilled spirits (other than Scotch, Irish, and Canadian whiskies, and Cognac) imported in bottles are not eligible for release from customs custody for consumption, and no person shall remove such spirits from customs custody for consumption, unless that person has obtained and is in possession of an invoice accompanied by a certificate of origin issued by an official duly authorized by the appropriate foreign government, if the issuance of such certificates with respect to such distilled spirits is required by the foreign government concerned, certifying as to the identity of the distilled spirits and that the distilled spirits have been manufactured in compliance with the laws of the respective foreign government regulating the manufacture of such distilled spirits for home consumption.

(f) *Retention of certificates.* The importer of distilled spirits imported in bottles must retain for five years following the removal of such spirits from customs custody copies of the certificates required by paragraphs (a) through (e) of this section, and must provide them upon request of the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513–0064)

§ 5.53 [Removed]

■ 18. Section 5.53 is removed.

■ 19. Section 5.56 is revised to read as follows:

§ 5.56 Certificates of age and origin.

Distilled spirits that would be required under § 5.52 to be covered by a certificate of age and/or a certificate of origin and that are imported in bulk for bottling in the United States may be removed from the plant where bottled only if the bottler possesses a certificate of age and/or a certificate of origin, issued by an official duly authorized by the foreign government as set forth in § 5.52, applicable to the spirits that provides the same information as a certificate required under § 5.52 would provide for like spirits imported in bottles. The bottler of distilled spirits imported in bulk must retain for five years following the removal of such spirits from the domestic plant where bottled copies of the certificates required by § 5.52(a) through (e), and must provide them upon request of the appropriate TTB officer.

(Approved by the Office of Management and Budget under control number 1513–0064)

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

■ 20. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

■ 21. Section 7.10 is amended by adding a definition of ''Customs officer'' in alphabetical order to read as follows:

§ 7.10 Meaning of terms.

* * * * *

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

* * * * *

■ 22. Section 7.31 is amended by:

■ a. Revising paragraph (a);

■ b. Removing and reserving paragraph (b); and

■ c. Adding an Office of Management and Budget control number reference at the end of the section.

The revision and addition read as follows:

§ 7.31 Label approval and release.

(a) *Certificate of label approval.* Malt beverages, imported in containers, are not eligible for release from customs custody for consumption, and no person may remove such malt beverages from customs custody for consumption, unless the person removing the malt beverages has obtained and is in possession of a certificate of label approval (COLA) and the containers bear labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by the form. Any person removing malt beverages in containers from customs custody for consumption must first apply for and obtain a COLA covering the malt beverages from the appropriate TTB officer, or obtain authorization to use the COLA from the person to whom the COLA is issued. Products imported under another person's COLA are eligible for release only if each bottle or individual container to be imported bears the name (or trade name) and address of the person to whom the COLA was issued by TTB, and only if the importer using the COLA to obtain release of a shipment can substantiate that the person to whom the COLA was issued has authorized its use by the importer. If filing electronically, the importer must file with U.S Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA covering the label on the brand or lot of malt beverages being imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at time of entry. In addition, the importer must provide a copy of the applicable COLA, and proof of the COLA holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer. The COLA requirement imposed by this section applies only to malt beverages that are removed for sale or any other commercial purpose. See 27 CFR 27.49, 27.74, and 27.75 for labeling exemptions applicable to certain imported malt beverages.

* * * * *

(Approved by the Office of Management and Budget under control numbers 1513–0020 and 1513–0064)

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

■ 23. The authority citation for part 26 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111–5114, 5121, 5122–5124, 5131–5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6109, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 26.1 [Amended]

■ 24. In § 26.1, paragraph (c) is amended by adding the words ‘‘, of Virgin Islands wine in bulk containers from customs custody to a bonded wine cellar qualified under part 24 of this chapter, and of Virgin Islands beer in bulk containers from customs custody to a brewery qualified under part 25 of this chapter’’ before the semicolon at the end of the paragraph.

■ 25. Section 26.11 is amended by:

■ a. Adding in alphabetical order definitions of ‘‘Bonded wine cellar’’ and ‘‘Brewery’’;

■ b. Revising the definitions of ‘‘Bulk container’’, ‘‘Customs officer’’, and ‘‘Importer’’; and

■ c. Adding in alphabetical order definitions of ‘‘IRC registry number’’, ‘‘Natural wine’’, and ‘‘Proof liter’’.

The revisions and additions read as follows:

§ 26.11 Meaning of terms.

* * * * *

Bonded wine cellar. Premises established under part 24 of this chapter.

* * * * *

Brewery. The land and buildings described in the brewer's notice, TTB Form 5130.10, where beer is to be produced and packaged.

Bulk container. When used in the context of distilled spirits, the term ‘‘bulk container’’ means any container having a capacity larger than one wine gallon. When used in the context of wine, the term ‘‘bulk container’’ means any container having a capacity larger than 60 liters. When used in the context of beer, the term ‘‘bulk container’’ means any container having a capacity larger than one barrel of 31 gallons.

* * * * *

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

* * * * *

Importer. Any person who brings distilled spirits, wines, or beer into the United States from the Virgin Islands.

* * * * *

IRC registry number. The number assigned by TTB to each distilled spirits plant, bonded wine cellar, taxpaid wine bottling house, bonded wine warehouse, or brewery upon approval of an application made pursuant to Internal Revenue Code of 1986 requirements (26 U.S.C. 5171, 5351–5353, or 5401).

* * * * *

Natural wine. The product of the juice or must of sound, ripe grapes or other sound, ripe fruit (including berries) made with any proper cellar treatment and containing not more than 21 percent by weight (21 degrees Brix dealcoholized wine) of total solids. For purposes of this definition, ‘‘proper cellar treatment’’ means a production practice or procedure authorized for natural wine by part 24 of this chapter, or, in the case of natural wine produced and imported subject to an international agreement or treaty, those practices and procedures acceptable to the United States under that agreement or treaty.

* * * * *

Proof liter. A liter of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity or the alcoholic equivalent thereof.

* * * * *

■ 26. Section 26.200 is amended by:

■ a. Adding paragraphs (d), (e), (f), and (g);

■ b. Revising the authority citation at the end of the section; and

■ c. Adding an Office of Management and Budget control number reference at the end of the section.

The additions and revision read as follows:

§ 26.200 Taxable status.

* * * * *

(d) Internal revenue taxes payable on liquors brought into the United States from the Virgin Islands are collected by U.S. Customs and Border Protection (CBP) in accordance with CBP requirements. The tax must be paid on the basis of a return, and the customs form (including any electronic transmissions) by which the liquors are duty- and tax-paid to CBP will be treated as a return for purposes of this part. The person bringing such liquors into the United States, if filing electronically, must file the information specified in this section with the entry or entry summary, as appropriate, along with any other information that is required by CBP to be filed with the entry or entry summary for purposes of administering the provisions of the Internal Revenue Code and Federal Alcohol Administration Act (FAA Act). Any information required by this section that is also required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will satisfy the requirements of this section. The following information is required as described under this section:

(1) The permit number of the valid importer permit issued under the FAA Act and the regulations issued pursuant to the FAA Act (27 CFR part 1), if applicable, as required by 27 CFR 1.20 and 1.58, and the importer's name, address, and employer identification number (EIN) associated with that permit;

(2) The TTB-assigned number of the valid certificate of label approval (COLA), if applicable, as required by 27 CFR 4.40 in the case of wine, 27 CFR 5.51 in the case of distilled spirits, and 27 CFR 7.31 in the case of malt beverages;

(3) The name and address of the ultimate consignee;

(4) The quantity of each product (for distilled spirits, in proof liters or proof gallons; for wine and beer, in liters or gallons); and

(5) Information identifying each product for Internal Revenue Code and/or FAA Act purposes.

(e) Distilled spirits, natural wines, and beer in bulk containers may be released from customs custody without payment of tax under the provisions of subpart Oa of this part and thereafter removed subject to tax from internal revenue bonded premises. The tax will be collected and paid under the provisions of parts 19, 24, and 25 of this chapter, respectively.

(f)(1) Except as provided in paragraph (f)(2) of this section, in the case of an entry for warehousing (that is, products transferred directly to a customs bonded warehouse or foreign trade zone), the last day for payment of the tax shall not be later than the 14th day after the last day of the semimonthly period during which the products are removed from the first such warehouse, even if the products have been removed from that customs bonded warehouse or foreign trade zone for transfer to another customs bonded warehouse or foreign trade zone.

(2) Paragraph (f)(1) of this section does not apply to any distilled spirits, wines, or beer entered for warehousing and then removed for transfer to another customs bonded warehouse or foreign trade zone that is shown to the satisfaction of the Secretary to be destined for export.

(g) Regardless of the method of filing, the person bringing the liquors into the United States must retain as a record the information required by this section, any information provided to CBP to meet CBP requirements, and any supporting documentation. These records must be retained in accordance with the record retention requirements of § 26.276, and the records must be made available upon request of the appropriate TTB officer or a customs officer.

(26 U.S.C. 5001, 5054, 5061, 5232, 5364, 5418, 7652)

(Approved by the Office of Management and Budget under control number 1513–0064)

■ 27. Section 26.201c is revised to read as follows:

§ 26.201c Shipments of distilled spirits, natural wine, and beer to the United States without payment of tax.

Distilled spirits, natural wine, and beer may be brought into the United States from the Virgin Islands in bulk containers without payment of tax for transfer in bond from customs custody to the bonded premises of a distilled spirits plant in the case of distilled spirits, a bonded wine cellar in the case of natural wine, or a brewery in the case of beer. Such shipments are subject to the provisions of subpart Oa of this part.

■ 28. Section 26.202 is revised to read as follows:

§ 26.202 Requirements of the Federal Alcohol Administration Act.

(a) *General.* The Federal Alcohol Administration Act (FAA Act) and the regulations issued under the FAA Act (parts 1, 4, 5, and 7 of this chapter) provide that any person, except an agency of a State or political subdivision thereof or any officer or employee of any such agency, who brings into the United States from the Virgin Islands distilled spirits, wines, or malt beverages for nonindustrial use must comply with the permit and labeling requirements described in this section. See 27 CFR 1.10 for the definitions of distilled spirits, wine, and malt beverages under the FAA Act. Tourists bringing distilled spirits, wines, or malt beverages into the United States for personal or other noncommercial use are not subject to the provisions of the FAA Act or regulations issued pursuant to the FAA Act (parts 1, 4, 5, and 7 of this chapter).

(b) *FAA Act basic permit.* Any person, except an agency of a State or a political subdivision thereof or any officer or employee of any such agency, who intends to engage in the business of bringing distilled spirits, wines, or malt beverages into the United States from the Virgin Islands must, prior to bringing such products into the United States, obtain an importer's basic permit, in accordance with the requirements of the FAA Act and regulations issued pursuant to the FAA Act, and must file with U.S. Customs and Border Protection (CBP) the number associated with this permit when filing electronically as required under 27 CFR 1.58. Also, as required under § 1.58 of this chapter, if the importer is not filing electronically, the importer must have a copy of the FAA Act basic permit and make it available upon request of the appropriate TTB officer or a customs officer.

(c) *Certificate of label approval.* Any person and any agency of a State or political subdivision thereof or any officer or employee of such agency, removing for commercial purposes containers of distilled spirits, wines, or malt beverages from the Virgin Islands from customs custody for consumption, when filing electronically, must provide the TTB-assigned identification number of the valid certificate of label approval (COLA) for the distilled spirits, wines, or malt beverages with the filing of the customs entry, in accordance with the requirements of 27 CFR 4.40 in the case of wine, 27 CFR 5.51 in the case of distilled spirits, or 27 CFR 7.31 in the case of malt beverages. Also, as required under 27 CFR 4.40, 5.51, and 7.31, if the importer is not filing electronically, the importer must provide a copy of the valid COLA to CBP at the time of entry.

(d) *Foreign certificates.* Any person and any agency of a State or political subdivision thereof or any officer or employee of such agency, bringing into the United States from the Virgin Islands for commercial purposes and for consumption containers of distilled spirits or wines that require a certificate under 27 CFR 4.45(a) in the case of wine or 27 CFR 5.52 in the case of distilled spirits must be in possession of the certificate (and accompanying invoice, if applicable) at the time of release from customs custody.

(Secs. 3, 5, 49 Stat. 978, as amended, 981, as amended; 27 U.S.C. 203, 205)

■ 29. Section 26.205 is amended by:
■ a. Revising paragraph (b);
■ b. Adding paragraphs (c) and (d); and
■ c. Revising the Office of Management and Budget control number reference at the end of the section.

The revisions and additions read as follows:

§ 26.205 Certificate.

* * * * *

(b) The person bringing the liquors into the United States must file the information required under § 26.200, in accordance with that section.

(c) The person bringing liquors into the United States from the Virgin Islands must maintain a copy of the certificate described in paragraph (a) of this section along with records to substantiate the information on the certificate, including information required under § 26.204, in accordance with the record retention requirements of § 26.276 and must make them available upon request of the appropriate TTB officer or a customs officer.

(d) For distilled spirits, natural wine, or beer withdrawn from customs custody under the provisions of subpart Oa of this part, the importer must furnish a copy of the certificate to the proprietor of the receiving distilled spirits plant, bonded wine cellar, or brewery.

(Approved by the Office of Management and Budget under control number 1513–0064)

* * * * *

■ 30. Section 26.260 is revised to read as follows:

§ 26.260 Required information.

Persons (except tourists) bringing liquors from the Virgin Islands into the United States must file with U.S. Customs and Border Protection, at the time of filing the entry or entry summary, as appropriate, the information required under § 26.200, in accordance with that section, and provide any information collected by any gauge under § 26.204 and any information contained in the certificate described in § 26.205, upon request, in accordance with the provisions of §§ 26.204 and 26.205(c).

§ 26.261 [Removed and reserved]

■ 31. Section 26.261 is removed and reserved.

■ 32. Section 26.263 is revised to read as follows:

§ 26.263 Determination of tax on beer.

If the certificate prescribed in § 26.205 covers beer, the beer tax will be collected at the rates imposed by 26 U.S.C. 5051.

(68A Stat. 611, as amended; 26 U.S.C. 5051, 7652)

■ 33. The authority citation at the end of § 26.264 is revised to read as follows:

§ 26.264 Determination of tax on wine.

* * * * *

(68A Stat. 609, as amended; 26 U.S.C. 5041, 7652)

§ 26.273 [Amended]

■ 34. Section 26.273 is amended, after the word ''plants'', by adding '', bonded wine cellars, and breweries''.

■ 35. Section 26.273a is revised to read as follows:

§ 26.273a Transfer record.

(a) *Distilled spirits.* The transfer record for Virgin Islands spirits prescribed in § 26.301 shall show the:

(1) Date prepared;

(2) Serial number of the transfer record, beginning with ''1'' each January 1;

(3) Name of the proprietor and TTB-issued IRC registry number of the plant to which consigned;

(4) Name and address of the consignor;

(5) Kind of spirits;

(6) Name of the producer;

(7) Age (in years, months and days) of the spirits;

(8) Proof of the spirits;

(9) Type and serial number of containers;

(10) Proof gallons of spirits in the shipment; and

(11) The customs entry number and amount of duty paid.

(b) *Natural wine.* The transfer record prescribed in § 26.301 must identify the importer and show the following:

(1) The date prepared;

(2) The name and address of the bonded wine cellar receiving the wine from customs custody;

(3) The TTB-issued IRC registry number of the bonded wine cellar receiving the wine from customs custody;

(4) The number of containers transferred and quantity of wine in each container;

(5) The country of origin of the wine;

(6) The customs entry number and amount of duty paid;

(7) The kind of wine; and

(8) The producer.

(c) *Beer.* The transfer record prescribed in § 26.301 must identify the importer and show the following:

(1) The date prepared;

(2) The name and address of the brewery receiving the beer from customs custody;

(3) The TTB-issued IRC registry number of the brewery receiving the beer from customs custody;

(4) The number of containers transferred and quantity of beer in each container;

(5) The country of origin of the beer;

(6) The customs entry number and amount of duty paid;

(7) The kind of beer; and

(8) The brewer.

(Approved by the Office of Management and Budget under control number 1513–0064)

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

■ 36. Section 26.276 is revised to read as follows:

§ 26.276 Retention.

All records required by this part, documents or copies of documents supporting these records (including data filed with U.S. Customs and Border Protection (CBP) pursuant to CBP requirements), and file copies of reports required by this part, must be retained for not less than three years from the date the shipment is released from customs custody into the United States, and during this period must be made available upon request of the appropriate TTB officer or a customs officer. Furthermore, the appropriate TTB officer may require these records to be kept for an additional period of not more than three years in any case where the appropriate TTB officer determines retention necessary or advisable. (For record retention periods under CBP regulations, see 19 CFR part 163.) Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, shall also be made available for inspection and copying.

(Approved by the Office of Management and Budget under control numbers 1513–0064 and 1513–0088)

■ 37. Section 26.292 is revised to read as follows:

§ 26.292 Consignee permit number.

If filing electronically, the importer must file with U.S. Customs and Border Protection the number associated with the consignee's permit issued under part 20 of this chapter (for shipments of specially denatured spirits) or part 22 of this chapter (for shipments of industrial spirits), along with the customs entry. If not filing electronically, the importer must make the permit available to the appropriate TTB officer or a customs officer upon request.

(Approved by the Office of Management and Budget under control number 1513–0064)

■ 38. Section 26.294 is revised to read as follows:

§ 26.294 Record of shipment.

(a) *Filing information with U.S. Customs and Border Protection.* Each person bringing industrial spirits or specially denatured spirits into the United States from the Virgin Islands, who files electronically, must file with U.S. Customs and Border Protection (CBP) the information specified in this paragraph, with the entry or entry summary, as appropriate. Any information required by this paragraph that is also required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will satisfy the requirements of this paragraph. In addition to the consignee's permit number or a copy of the consignee's permit as required by § 26.292, the following information is required:

(1) The name and address of the consignee;

(2) The name and address of the consignor; and

(3) The total quantity shipped.

(b) *Maintaining the record of shipment.* For each shipment of industrial spirits or specially denatured spirits from the Virgin Islands to the United States, the importer shall possess and maintain a record of shipment. The record of shipment shall consist of an invoice, bill of lading, or similar document that shows the information required in paragraph (a) of this section, as well as the following:

(1) For each formula of specially denatured spirits, the formula number prescribed by part 21 of this chapter;

(2) For each formula of specially denatured spirits, the total quantity in liters or gallons and the serial numbers or package identification numbers of containers; and

(3) For industrial spirits, the total quantity in proof liters or proof gallons and the package identification numbers of containers.

(c) *Retaining records and making them available upon request.* The person bringing industrial spirits or specially denatured spirits into the United States from the Virgin Islands must maintain records to substantiate the information required under paragraph (a) of this section, and any information provided to CBP to meet CBP requirements, in accordance with the record retention requirements of § 26.276. Such records also must be made available upon request of the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513–0064)

■ 39. Section 26.296 is revised to read as follows:

§ 26.296 Record of shipment.

(a) *Filing information with U.S. Customs and Border Protection.* Each person bringing completely denatured alcohol or products made with denatured spirits into the United States from the Virgin Islands, who files electronically, must file with U.S. Customs and Border Protection (CBP) the information specified in this paragraph with the entry or entry summary, as appropriate. Any information required by this paragraph that is also required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will satisfy the requirements of this paragraph. The following information is required:

(1) The consignor's name and address;

(2) The consignee's name and address; and

(3) The total quantity shipped.

(b) *Maintaining additional information as a record.* For each shipment of completely denatured alcohol or products made with

denatured spirits from the Virgin Islands to the United States, the importer shall possess and maintain a record of shipment. The record of shipment shall consist of an invoice, bill of lading, or similar document that shows the information required under paragraph (a) of this section, as well as the following:

(1) The capacity and number of containers;

(2) For each formulation of completely denatured alcohol, the words ''Virgin Islands Completely Denatured Alcohol'' and the formula number prescribed by part 21 of this chapter; and

(3) For product made with denatured spirits, the name, trade name, or brand name of the product.

(c) *Retaining records and making them available upon request.* The person bringing completely denatured alcohol or products made with denatured spirits into the United States from the Virgin Islands must maintain records to substantiate the information required under paragraph (a) of this section and records as required under paragraph (b) of this section, and any information submitted to CBP to meet CBP requirements, in accordance with the record retention requirements of § 26.276. Such records also must be made available upon request of the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513–0064)

§ 26.297 [Removed]

■ 40. Section 26.297 and the undesignated center heading immediately before it are removed.

■ 41. The heading of subpart Oa is revised to read as follows:

Subpart Oa—Transfer of Virgin Islands Distilled Spirits, Natural Wines, and Beer Without Payment of Tax, From Customs Custody to Internal Revenue Bond

■ 42. Section 26.300 is amended by:

■ a. Revising the section heading;

■ b. Removing ''(a)'' and ''(b)'' from the second sentence;

■ c. Designating the existing text as paragraph (a);

■ d. Adding a heading to newly designated paragraph (a); and

■ e. Adding paragraphs (b) and (c).

The revision and additions read as follows:

§ 26.300 General provisions.

(a) *Transfer of bulk distilled spirits from customs custody to bonded premises of a distilled spirits plant.* * * *

(b) *Transfer of bulk natural wine from customs custody to a bonded wine cellar.* Bulk natural wine, as defined in § 26.11, brought into the United States from the Virgin Islands may, under the provisions of this subpart, be withdrawn by the proprietor of a bonded wine cellar from customs custody and transferred in bond in bulk containers to the bonded wine cellar, without payment of the internal revenue tax imposed on such wine by 26 U.S.C. 7652. Wine so withdrawn and transferred to a bonded wine cellar may be withdrawn from a bonded wine cellar's internal revenue bond for any purpose authorized by 26 U.S.C. chapter 51, in the same manner as domestic wine. The proprietor of the bonded wine cellar to which the wine is transferred becomes liable for the tax on wine withdrawn from customs custody under 26 U.S.C. 5364. Upon release of the wine from customs custody, the person bringing in the wine is relieved of the liability for the tax.

(c) *Transfer of beer from customs custody to brewery premises.* Bulk beer brought into the United States from the Virgin Islands may, under the provisions of this subpart, be withdrawn by the proprietor of a bonded brewery from customs custody and transferred in bulk containers to the bonded brewery premises, without payment of the internal revenue tax imposed on such beer by 26 U.S.C. 7652. Beer so withdrawn and transferred to bonded brewery premises may be withdrawn from a brewery's internal revenue bond for any purpose authorized by 26 U.S.C. chapter 51, in the same manner as domestic beer. The proprietor of the bonded brewery to which the beer is transferred becomes liable for the tax on beer withdrawn from customs custody under 26 U.S.C. 5418. Upon release of the beer from customs custody, the person bringing in the beer from the Virgin Islands is relieved of the liability for the tax.

■ 43. Section 26.301 is revised to read as follows:

§ 26.301 Record of shipment.

(a) *Preparation of records.* (1) The importer bringing distilled spirits, natural wines, or beer into the United States from the Virgin Islands under this subpart must prepare a transfer record according to § 26.273a. A separate transfer record must be prepared for each conveyance. The importer bringing in the distilled spirits, natural wines, or beer must maintain these records and any additional records necessary to substantiate the information provided under paragraph (b) of this section, in accordance with the record retention requirements of § 26.276, and must make them available upon request of the appropriate TTB officer or a customs officer. The importer must also provide a copy of the record to the recipient, if the recipient is not the importer.

(2) For distilled spirits, if the spirits are in packages, the person bringing the spirits into the United States must be in possession of a package gauge record for each bulk container, as provided in § 26.273b, at the time the distilled spirits are withdrawn from customs custody. The package gauge record may be prepared by the insular gauger at the time of their withdrawal from an insular bonded warehouse, as provided in § 26.204, or, if not prepared by the insular gauger, the package gauge record must be prepared by the insular consignor.

(b) *Reporting information for release from customs custody.* A person bringing distilled spirits, natural wines, or beer into the United States from the Virgin Islands under this subpart, if filing electronically, must file with U.S. Customs and Border Protection (CBP) the information specified in this section at the time of filing the entry or entry summary, as appropriate, along with any other information that is required by CBP to be filed with the entry or entry summary for purposes of administering the provisions of the Internal Revenue Code and Federal Alcohol Administration Act (FAA Act). Any information required by this section that is also required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will satisfy the requirements of this section. Regardless of the method of filing, the importer must retain all of the information required by this section and any supporting documentation and make it available for inspection by the appropriate TTB officer or a customs officer. The following information is required:

(1) The number of the importer's basic permit issued under the FAA Act and the regulations issued pursuant to the FAA Act (27 CFR part 1), if applicable, as required by 27 CFR 1.20, and the importer's employer identification number (EIN) associated with that permit;

(2) The name and address of the ultimate consignee;

(3) The TTB-issued IRC registry number of the ultimate consignee;

(4) The quantity of each distilled spirit, natural wine, or beer in the shipment (in proof liters or proof gallons, for distilled spirits); and

(5) Information identifying each product for Internal Revenue Code and/or FAA Act purposes.

(c) *Maintenance of substantiating records.* The importer bringing the distilled spirits, wines, or beer into the United States must maintain records to substantiate the information required under paragraph (b) of this section in accordance with the record retention requirements of § 26.276 and must provide them upon request of the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513–0064)

§ 26.302 [Removed and Reserved]

■ 44. Section 26.302 is removed and reserved.

§ 26.303 [Removed and Reserved]

■ 45. Section 26.303 is removed and reserved.

§ 26.314 [Amended]

■ 46. In § 26.314:

■ a. Redesignate paragraphs (b)(1) through (5) as (b)(1)(i) through (v);

■ b. Designate the text after the paragraph (b) heading as new paragraph (b)(1);

■ c. Designate the undesignated concluding paragraph as paragraph (b)(2) and remove the last sentence; and

■ d. Remove the Office of Management and Budget control number reference from the end of the section and add in its place the Office of Management and Budget control number reference ''(Approved by the Office of Management and Budget under control number 1513–0020)''.

■ 47. Section 26.316 is revised to read as follows:

§ 26.316 Bottles not constituting approved containers.

The appropriate TTB officer is authorized to disapprove any bottle, including a bottle of less than 200 mL capacity, for use as a liquor bottle which he determines to be deceptive. Disapproved bottles may not be brought into the United States from the U.S. Virgin Islands or from Puerto Rico.

■ 48. Section 26.318 is revised to read as follows:

§ 26.318 Liquor bottles not eligible to be brought into the United States.

(a) *General.* Except as provided in paragraph (b) of this section, filled liquor bottles that do not conform to the provisions of this subpart may not be brought into the United States from Puerto Rico or the Virgin Islands.

(b) *Exception.* Upon receipt of a letterhead application, the appropriate TTB officer may, in nonrecurring cases, authorize a person to bring into the United States liquor bottles that do not conform to the provisions of this part if that TTB officer determines that the nonconformance is due to an unintentional error; the nonconforming liquor bottle is determined not to be deceptive, as provided in § 26.316; and the entry of the nonconforming liquor bottle will not jeopardize the revenue. The person bringing such liquor bottles into the United States under such TTB authorization must maintain for not less than three years from the date that the liquor bottles were released from customs custody proof of that authorization and make it available upon request by the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513–0064)

§ 26.319 [Amended]

■ 49. Section 26.319 is amended by:

■ a. Removing the words ''filed in triplicate''; and

■ b. Removing ''§ 31.263'' and adding in its place ''§ 31.203''.

§ 26.331 [Amended]

■ 50. Section 26.331 is amended by removing the words '', in triplicate,'' and removing the Office of Management and Budget control number reference at the end of the section and adding in its place ''(Approved by the Office of Management and Budget under control number 1513–0064)''.

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

■ 51. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5121, 5122–5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5382, 5555, 6109, 6302, 7805.

■ 52. Section 27.11 is amended by:

■ a. Adding in alphabetical order definitions of ''Bonded wine cellar'' and ''Brewery'';

■ b. Revising the definitions of ''Bulk container'' and ''Customs officer'';

■ c. Removing the definition of ''District director of customs''; and

■ d. Adding in alphabetical order definitions of ''IRC registry number'', ''Natural wine'', and ''Proof liter''.

The revisions and additions read as follows:

§ 27.11 Meaning of terms.

* * * * *

Bonded wine cellar. Premises established under part 24 of this chapter.

Brewery. The land and buildings described in the brewer's notice, TTB Form 5130.10, where beer is to be produced and packaged.

Bulk container. When used in the context of distilled spirits, the term ''bulk container'' means any container having a capacity larger than one wine gallon. When used in the context of wine, the term ''bulk container'' means any container having a capacity larger than 60 liters. When used in the context of beer, the term ''bulk container'' means any container having a capacity larger than one barrel of 31 gallons.

* * * * *

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

* * * * *

IRC registry number. The number assigned by TTB to each distilled spirits plant, bonded wine cellar, taxpaid wine bottling house, bonded wine warehouse, or brewery upon approval of an application made pursuant to Internal Revenue Code of 1986 requirements (26 U.S.C. 5171, 5351–5353, or 5401).

* * * * *

Natural wine. The product of the juice or must of sound, ripe grapes or other sound, ripe fruit (including berries) made with any proper cellar treatment and containing not more than 21 percent by weight (21 degrees Brix dealcoholized wine) of total solids. For purposes of this definition, ''proper cellar treatment'' means a production practice or procedure authorized for natural wine by part 24 of this chapter, or, in the case of natural wine produced and imported subject to an international agreement or treaty, those practices and procedures acceptable to the United States under that agreement or treaty.

* * * * *

Proof liter. A liter of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity or the alcoholic equivalent thereof.

* * * * *

■ 53. Section 27.48 is revised to read as follows:

§ 27.48 Imported distilled spirits, wines, and beer.

(a) *Distilled spirits, wines, and beer imported subject to tax*—(1) *General.* Internal revenue taxes payable on imported distilled spirits, wines, and

beer are collected, accounted for, and deposited as internal revenue collections by U.S. Customs and Border Protection (CBP) in accordance with CBP requirements. The tax must be paid on the basis of a return, and the customs form (including any electronic transmissions) by which the distilled spirits, wines, or beer are duty- and tax-paid to CBP will be treated as a return for purposes of this part.

(2) *Required information.* In the case of distilled spirits, wines, and beer imported into the United States subject to tax, the importer, if filing electronically, must file the information specified in this section with the entry or entry summary, as appropriate, along with any other information that is required by CBP to be filed with the entry or entry summary for purposes of determining and collecting the Federal excise tax and administering the provisions of the Internal Revenue Code and Federal Alcohol Administration Act (FAA Act). Any information required by this section that is also required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will satisfy the requirements of this section. For all distilled spirits, wines, and beer imported under this paragraph, the following information is required:

(i) The number of the importer's basic permit issued under the FAA Act and the regulations issued pursuant to the FAA Act (27 CFR part 1), if applicable, as required by 27 CFR 1.20 and 1.58, and the importer's name, address, and employer identification number (EIN) associated with that permit;

(ii) The TTB-assigned number of the valid certificate of label approval (COLA), if applicable, as required by 27 CFR 4.40 in the case of wine, 27 CFR 5.51 in the case of distilled spirits, and 27 CFR 7.31 in the case of malt beverages;

(iii) The name and address of the ultimate consignee;

(iv) The quantity of each product (for distilled spirits, in proof liters or proof gallons; for beer and wine, in gallons or liters); and

(v) Information identifying each product for Internal Revenue Code and/or FAA Act purposes, as applicable.

(b) *Distilled spirits, natural wines, and beer transferred without payment of tax to internal revenue bond.* Distilled spirits, natural wine (as defined in § 27.11) and beer in bulk containers may be released from customs custody without payment of tax under the provisions of subpart L of this part and thereafter removed subject to tax from distilled spirits plants, bonded wine cellars, and breweries, respectively. The tax will be collected and paid under the provisions of part 19, 24 or 25 of this chapter, respectively.

(c) *Entry for warehousing*—(1) *General.* Except as provided in paragraph (c)(2) of this section, in the case of an entry for warehousing (that is, products transferred directly to a customs bonded warehouse or foreign trade zone), the last day for payment of the tax shall not be later than the 14th day after the last day of the semimonthly period during which the products are removed from the first such warehouse, even if the products are removed from that customs bonded warehouse or foreign trade zone for transfer to another customs bonded warehouse or foreign trade zone.

(2) *Entry for warehousing of products destined for export.* Paragraph (c)(1) of this section does not apply to any distilled spirits, wines, or beer entered for warehousing and then removed for transfer to another custom bonded warehouse or foreign trade zone that is shown to the satisfaction of the Secretary to be destined for export.

(d) *Records.* Regardless of the method of filing, the importer must maintain as a record the information required by this section, any information provided to CBP to meet CBP requirements, and any supporting documentation. These records must be maintained in accordance with the record retention requirements of § 27.137, and the records must be made available upon request of the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513–0064)

(26 U.S.C. 5001, 5054, 5061, 5232, 5364, 5418)

■ 54. Section 27.55 and the undesignated center heading preceding it are revised to read as follows:

Federal Alcohol Administration Act Requirements for Importation of Distilled Spirits, Wines, and Malt Beverages

§ 27.55 Requirements of the Federal Alcohol Administration Act.

(a) *General.* The Federal Alcohol Administration Act (FAA Act) and the regulations issued under the FAA Act (parts 1, 4, 5, and 7 of this chapter) provide that any person, except an agency of a State or political subdivision thereof or any officer or employee of any such agency, who imports distilled spirits, wines, or malt beverages for nonindustrial use must comply with certain permit and labeling requirements as described in this section. See 27 CFR 1.10 for the definitions of distilled spirits, wine, and malt beverages under the FAA Act. Tourists importing distilled spirits, wines, or malt beverages into the United States for personal or other noncommercial use are not subject to the provisions of the FAA Act or regulations issued pursuant to the FAA Act (parts 1, 4, 5, and 7 of this chapter).

(b) *FAA Act basic permit.* Any person, except an agency of a State or a political subdivision thereof or any officer or employee of any such agency, who intends to engage in the business of importing distilled spirits, wines, or malt beverages into the United States must, prior to importing such products into the United States, obtain an importer's basic permit, in accordance with the requirements of the FAA Act and regulations issued pursuant to the FAA Act, and must file with U.S. Customs and Border Protection (CBP) the number associated with this permit with the filing of the customs entry when filing electronically as required under 27 CFR 1.58. Also, as required under § 1.58 of this chapter, if the importer is not filing electronically, the importer must have a copy of the FAA Act basic permit and make it available upon request of the appropriate TTB officer or a customs officer.

(c) *Certificate of label approval.* Any person and any agency of a State or political subdivision thereof or any officer or employee of such agency, removing for commercial purposes containers of distilled spirits, wines, or malt beverages from customs custody for consumption, when filing electronically, must provide the TTB-assigned identification number of the valid certificate of label approval (COLA) for the distilled spirits, wines, or malt beverages with the filing of the customs entry in accordance with the requirements of 27 CFR 4.40 in the case of wine, 27 CFR 5.51 in the case of distilled spirits, or 27 CFR 7.31 in the case of malt beverages. Also, as required under 27 CFR 4.40, 5.51, and 7.31, if the importer is not filing electronically, the importer must provide a copy of the valid COLA to CBP at time of entry.

(d) *Foreign certificates.* Every person and any agency of a State or political subdivision thereof or any officer or employee of such agency, importing for commercial purposes into the United States for consumption containers of distilled spirits or wines that require a certificate under 27 CFR 4.45 in the case of wine or 27 CFR 5.52 in the case of distilled spirits must be in possession of the certificate (and accompanying invoice, if applicable) at the time of release from customs custody.

(Sec. 3, 49 Stat. 978, as amended; 27 U.S.C. 203)

■ 55. Section 27.76 is amended by:
■ a. In paragraph (a), by removing ''TTB Form 5530.5 (1678)'' and adding in its place ''TTB Form 5154.1 (formerly TTB Form 5530.5 and ATF Form 1678)'';
■ b. Revising paragraph (d);
■ c. Adding paragraph (e); and
■ d. Revising the OMB control number reference at the end of the section.

The revisions and additions read as follows:

§ 27.76 Approval and certification of wine and flavors content.

* * * * *

(d) At the time of filing the entry summary, the importer must have the certificate in its possession and make it available upon request of the appropriate TTB officer or a customs officer. For distilled spirits withdrawn from customs custody under the provisions of subpart L of this part, the importer must furnish a copy of the certificate to the proprietor of the distilled spirits plant to which the distilled spirits are transferred.

(e) The importer must maintain a copy of the certificate in accordance with the record retention requirements of § 27.137 and must make it available upon request of the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513–0064)

* * * * *

■ 56. Section 27.77 is amended by:
■ a. Revising the second sentence of paragraph (d);
■ b. Adding paragraphs (e) and (f); and
■ c. Revising the OMB control number reference at the end of the section.

The revisions and additions read as follows:

§ 27.77 Standard effective tax rate.

* * * * *

(d) * * *At the time of filing the entry summary, the importer must have the approval in its possession and make it available upon request of the appropriate TTB officer or a customs officer. * * *

(e) The importer must maintain a copy of the approval in accordance with the record retention requirements of § 27.137 and must make it available upon request of the appropriate TTB officer.

(f) For distilled spirits withdrawn from customs custody under the provisions of subpart L of this part, the importer must furnish a copy of the approval to the proprietor of the distilled spirits plant to which the distilled spirits are transferred.

(Approved by the Office of Management and Budget under control number 1513–0064)

§ 27.120 [AMENDED]

■ 57. In § 27.120, remove ''Regulation 3 (27 CFR part 3)'' and add ''subpart E of part 1 of this chapter'' in its place.

■ 58. Section 27.137 is revised to read as follows:

§ 27.137 Retention.

All records required by this part, documents or copies of documents supporting these records (including data filed with U.S. Customs and Border Protection (CBP) pursuant to CBP requirements), and file copies of reports required by this part, must be retained for not less than three years following each withdrawal from customs custody, and during this period must be made available upon request of the appropriate TTB officer or a customs officer. Furthermore, the appropriate TTB officer may require these records to be kept for an additional period of not more than three years in any case where the appropriate TTB officer determines retention necessary or advisable. (For record retention periods under CBP regulations, see 19 CFR part 163.) Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, shall also be made available for inspection and copying.

(Approved by the Office of Management and Budget under control number 1513–0064 and 1513–0088)

■ 59. Section 27.138 is revised to read as follows:

§ 27.138 Transfer record.

(a) *Distilled spirits.* The transfer record prescribed in § 27.172 must identify the importer and show the following:

(1) The date prepared;

(2) Serial number of the transfer record, beginning with ''1'' each January 1;

(3) The name, address, and TTB-issued IRC registry number (distilled spirits plant number) of the proprietor receiving the spirits from customs custody;

(4) The country of origin of the distilled spirits;

(5) The name of the foreign producer;

(6) The kind of spirits;

(7) The age, in years, months and days of the spirits;

(8) The proof of the spirits;

(9) The type and number of containers;

(10) The proof gallons of spirits in the shipment; and

(11) The customs entry number and the amount of duty paid.

(b) *Wine.* The transfer record prescribed in § 27.172 must identify the importer and show the following:

(1) The date prepared;

(2) The name and address of the bonded wine cellar receiving the wine from customs custody;

(3) The TTB-issued IRC registry number of the bonded wine cellar receiving the wine from customs custody;

(4) The number of containers transferred and quantity of wine in each container;

(5) The country of origin of the wine;

(6) The customs entry number and amount of duty paid;

(7) The kind of wine; and

(8) The foreign producer.

(c) *Beer.* The transfer record prescribed in § 27.172 must identify the importer and show the following:

(1) The date prepared;

(2) The name and address of the brewery receiving the beer from customs custody;

(3) The TTB-issued IRC registry number of the brewery receiving the beer from customs custody;

(4) The number of containers transferred and quantity of beer in each container;

(5) The country of origin of the beer;

(6) The customs entry number and the amount of duty paid;

(7) The kind of beer; and

(8) The foreign brewer.

(Approved by the Office of Management and Budget under control number 1513–0064)

■ 60. Section 27.140 is amended by:
■ a. In paragraph (a):
■ i. Removing the definitions of ''Importer'' and ''Natural wine''; and
■ ii. Revising the definition of ''Proper cellar treatment'';
■ b. Revising the introductory text of paragraph (b)(1); and
■ c. Adding an Office of Management and Budget control number reference at the end of the section.

The revisions and addition read as follows:

§ 27.140 Certification requirements for wine.

(a) * * *

Proper cellar treatment means a production practice or procedure authorized for natural wine by part 24 of this chapter, or, in the case of natural wine produced and imported subject to an international agreement or treaty, those practices and procedures acceptable to the United States under that agreement or treaty.

(b) * * * (1) *General.* Except as otherwise provided in paragraph (b)(2) of this section, an importer of natural wine must have an original or copy of

a certification from the producing country stating that the practices and procedures used to produce the imported wine constitute proper cellar treatment. The importer of bottled wine must be in possession of the certificate at the time of filing the entry with CBP, and the bottler of bulk wine must be in possession of the certificate at the time the wine is withdrawn from the premises where bottled. The importer or bottler, as appropriate, must provide the certificate upon request by the appropriate TTB officer or a customs officer. This requirement may be satisfied by providing the original certification, or a photocopy or electronic copy of the certification. The appropriate TTB officer or a customs officer may request, and the importer or bottler must provide, such information for a period of three years from the date that the product covered by the certificate was released from customs custody or removed from the bottler's premises, as applicable. The certification:

* * * * *

(Approved by the Office of Management and Budget under control numbers 1513–0064 and 1513–0119)

■ 61. The heading of subpart L is revised to read as follows:

Subpart L—Transfer of Distilled Spirits, Natural Wines, and Beer Without Payment of Tax, From Customs Custody to Internal Revenue Bond

■ 62. Section 27.171 is amended by:
■ a. Removing ''(a)'' and ''(b)'' from the second sentence;
■ b. Designating the existing text as paragraph (a);
■ c. Adding a heading to paragraph (a);
■ d. Adding paragraphs (b) and (c); and
■ e. Revising the authority citation at the end of the section.

The additions and revision read as follows:

§ 27.171 General provisions.

(a) *Transfer of bulk distilled spirits from customs custody to bonded premises of a distilled spirits plant.*
* * *

(b) *Transfer of bulk natural wine from customs custody to a bonded wine cellar.* Imported ''natural wine,'' as defined in § 27.11, may, under the provisions of this subpart, be withdrawn in bulk by the proprietor of a bonded wine cellar from customs custody and transferred in bulk containers to the bonded wine cellar without payment of the internal revenue tax imposed on wine by 26 U.S.C. 5041. Imported wine so withdrawn and transferred may be withdrawn from a bonded wine cellar's internal revenue bond for any purpose authorized by 26 U.S.C. chapter 51, in the same manner as domestic wine. The proprietor of the bonded wine premises to which imported wine is transferred becomes liable for the tax on wine withdrawn from customs custody under 26 U.S.C. 5364. Upon release of the wine from customs custody, the importer is relieved of the liability for the tax.

(c) *Transfer of beer from customs custody to a brewery.* Imported bulk beer may, under the provisions of this subpart, be withdrawn by the proprietor of bonded brewery from customs custody and transferred in bulk containers to bonded brewery premises, without payment of the internal revenue tax imposed on beer by 26 U.S.C. 5051. Imported beer so withdrawn and transferred to bonded brewery premises may be withdrawn from a brewery's internal revenue bond for any purpose authorized by 26 U.S.C. chapter 51, in the same manner as domestic beer. The proprietor operating the bonded brewery premises to which imported beer is transferred becomes liable for the tax on beer withdrawn from customs custody under 26 U.S.C. 5418. Upon release of the beer from customs custody, the importer is relieved of the liability for the tax.

(26 U.S.C. 5232, 5364, and 5418)

■ 63. Section 27.172 is revised to read as follows:

§ 27.172 Preparation of records and reporting of information for release of distilled spirits, natural wines, and beer without payment of tax.

(a) *Preparation of records.* (1) The person importing distilled spirits, natural wines, or beer under this subpart must prepare a transfer record according to § 27.138. A separate transfer record must be prepared for each conveyance. The importer must maintain these records and any records to substantiate the information required under paragraph (b) of this section, in accordance with the record retention requirements of § 27.137, and must make them available upon request of the appropriate TTB officer or a customs officer. The importer must also provide a copy of the record to the recipient, if the recipient is not the importer.

(2) For distilled spirits, if the spirits are in packages, the importer must prepare a package gauge record according to § 27.139 and maintain it with the transfer record.

(b) *Reporting information for release from customs custody.* In the case of distilled spirits, natural wines, and beer imported into the United States without payment of tax under this subpart, the importer, if filing electronically, must file with U.S. Customs and Border Protection (CBP) the information specified in this section at the time of filing the entry or entry summary, as appropriate, along with any other information that is required by CBP to be filed with the entry or entry summary for purposes of administering the provisions of the Internal Revenue Code and Federal Alcohol Administration Act (FAA Act). Any information required by this section that is also required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will satisfy the requirements of this section. Regardless of the method of filing, the importer must retain as a record the information required by this section, any information provided to CBP to meet CBP requirements, and any supporting documentation and make such records available for inspection by the appropriate TTB officer or a customs officer. The following information is required:

(1) The number of the importer's basic permit issued under the FAA Act and the regulations issued pursuant to the FAA Act (27 CFR part 1), if applicable, as required by 27 CFR 1.20, and the importer's employer identification number (EIN) associated with that permit;

(2) The name and address of the ultimate consignee;

(3) The TTB-issued IRC registry number of the ultimate consignee;

(4) The quantity of each distilled spirit, wine, or beer in the shipment (in proof liters or proof gallons, for distilled spirits); and

(5) Information identifying each product for Internal Revenue Code and/or FAA Act purposes.

(Approved by the Office of Management and Budget under control number 1513–0064)

§ 27.173 [Removed and Reserved]

■ 64. Section 27.173 is removed and reserved.

■ 65. In § 27.175, the section heading is revised to read as follows:

§ 27.175 Receipt of distilled spirits by consignee.

* * * * *

■ 66. Section 27.183 is revised to read as follows:

§ 27.183 Use of Government agency permit, Form 5150.33.

Each Government agency must retain the original of its permit, Form 5150.33, on file. In the case of an agency holding a single permit for use of its sub-agencies, an attachment to the permit

must list all locations authorized to withdraw spirits free of tax from customs custody. When withdrawing spirits free of tax from a port of entry, the agency, if filing electronically, must file its TTB-issued permit number along with the filing of any other information required by U.S. Customs and Border Protection to be filed with the customs entry. If the agency is not filing electronically, rather than file the TTB-issued permit number, the agency must make a copy of the permit available to the customs officer upon request.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

■ 67. Section 27.184 is revised to read as follows:

§ 27.184 Information required for entry.

Government agencies importing tax-free spirits under this subpart must file, along with filing the customs entry or entry summary, the total quantity of the spirits to be entered and, if filing electronically, the permit number as required under § 27.183.

§ 27.185 [Removed]

■ 68. Section 27.185 is removed.

§ 27.204 [Amended]

■ 69. Section 27.204 is amended by:

■ a. Redesignating paragraphs (b)(1) through (5) as (b)(1)(i) through (v);

■ b. Designate the text after the paragraph (b) heading as new paragraph (b)(1);

■ c. Designating the undesignated concluding paragraph as paragraph (b)(2) and removing the last sentence; and

■ d. Adding the Office of Management and Budget control number reference ''(Approved by the Office of Management and Budget under control number 1513–0020)'' at the end of the section.

■ 70. Section 27.206 is amended by revising the last sentence to read as follows:

§ 27.206 Bottles not constituting approved containers.

* * * Disapproved bottles may not be imported into the United States.

■ 71. Section 27.208 is revised to read as follows:

§ 27.208 Liquor bottles not eligible for release from customs custody.

Upon receipt of a letterhead application, the appropriate TTB officer may, in nonrecurring cases, authorize a person to bring into the United States liquor bottles that do not conform to the provisions of this part if that TTB officer determines that the nonconformance is due to an unintentional error; the nonconforming liquor bottle is determined not to be deceptive, as provided in § 27.206; and the entry of the nonconforming liquor bottle will not jeopardize the revenue. The person bringing such liquor bottles into the United States under TTB authorization must maintain proof of such authorization for not less than three years from the date that the liquor bottles were released from customs custody and make it available upon request by the appropriate TTB officer or a customs officer.

(Approved by the Office of Management and Budget under control number 1513–0064)

§ 27.209 [Amended]

■ 72. Section 27.209 is amended by:

■ a. Removing the words ''filed in triplicate'';

■ b. Removing ''§ 31.263'' and adding in its place ''§ 31.203''; and

■ c. Removing the Office of Management and Budget control number reference at the end of the section and adding in its place the Office of Management and Budget control number reference ''(Approved by the Office of Management and Budget under control number 1513–0064)''.

§ 27.221 [Amended]

■ 73. Section 27.221 is amended paragraph (a) introductory text by removing the words '', in triplicate,'' and removing the Office of Management and Budget control number reference at the end of the section and adding in its place the Office of Management and Budget control number reference ''(Approved by the Office of Management and Budget under control number 1513–0064)''.

PART 41—IMPORTATION OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

■ 74. The authority citation for part 41 is revised to read as follows:

Authority: 26 U.S.C. 5701–5705, 5708, 5712, 5713, 5721–5723, 5741, 5754, 5761–5763, 6301, 6109, 6302, 6313, 6402, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 75. Section 41.11 is amended by revising the definition of ''Customs officer'' to read as follows:

§ 41.11 Meaning of terms.

* * * * *

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

* * * * *

■ 76. Section 41.81 is amended by revising paragraphs (b) and (c) and adding an Office of Management and Budget control number reference at the end of the section to read as follows:

§ 41.81 Taxpayment.

* * * * *

(b) *Method of payment.* Except for articles imported or brought into the United States as provided in §§ 41.85 and 41.85a, the internal revenue tax must be determined before the tobacco products, cigarette papers, or cigarette tubes are released from customs custody. The tax must be paid on the basis of a return, and the customs form (including any electronic transmissions) by which the tobacco products, cigarette papers, or cigarette tubes are duty- and tax-paid to CBP will be treated as a return for purposes of this part.

(c) *Required information.* In the case of tobacco products and cigarette papers and tubes imported into the United States for consumption, the importer, if filing electronically, must file with U.S. Customs and Border Protection (CBP) the information specified in paragraphs (c)(1) through (7) of this section at the time of filing the entry or entry summary, as appropriate, along with any other information that is required by CBP to be filed with the entry or entry summary for purposes of determining and collecting the Federal excise tax and administering the provisions of the Internal Revenue Code. Any information required under paragraphs (c)(1) through (7) of this section that is required by, and filed with, CBP as part of the entry or entry summary for purposes of meeting CBP requirements will also satisfy the requirements of this section. Regardless of the method of filing, the importer must retain as a record the information required by this section, any information provided to CBP to meet CBP requirements, and any supporting documentation and make such records available upon request by the appropriate TTB officer or a customs officer.

(1) *All tobacco products.* For all tobacco products, the following information is required:

(i) The number of the tobacco product importer permit that is issued under subpart K of this part;

(ii) The employer identification number (EIN) assigned to the importer by the Internal Revenue Service and provided by the importer on its permit application to TTB made on TTB Form 5230.4;

(iii) The name and address of the ultimate consignee;

(iv) The information specific to each tobacco product set forth in paragraphs (c)(2) through (6) of this section.

(2) *Cigarettes.* For cigarettes, in addition to the information required in paragraph (c)(1) of this section, the importer must provide a description of the product for Internal Revenue Code purposes, including ''cigarettes'' and either ''small'' (or ''class A'') or ''large'' (or ''class B'') and must also provide the number of cigarettes.

(3) *Cigars.* For cigars, in addition to the information required in paragraph (c)(1) of this section, the importer must provide:

(i) The number of cigars imported under each Harmonized Tariff Schedule of the United States (HTSUS) code number;

(ii) The description of the cigars for Internal Revenue Code purposes, including ''cigars'' and either ''large'' or ''small'';

(iii) For large cigars with a sale price of $763.222 or less per 1,000, the number and sale price (the price for which sold by the importer) per 1,000 of such cigars; and

(iv) For large cigars with a sale price of more than $763.222 per 1,000, the number of such cigars.

(4) *Smokeless tobacco.* For smokeless tobacco, in addition to the information required in paragraph (c)(1) of this section, the importer must provide a description of the product for Internal Revenue Code purposes, as either ''chewing tobacco'' or ''snuff'' and will state the number of pounds and ounces or kilograms and grams of the product.

(5) *Pipe tobacco.* For pipe tobacco, in addition to the information required in paragraph (c)(1) of this section, the importer must provide a description of the product under the Internal Revenue Code, as ''pipe tobacco,'' and will also state the number of pounds and ounces or kilograms and grams of the product.

(6) *Roll-your-own tobacco.* For roll-your-own tobacco, in addition to the information required in paragraph (c)(1) of this section, the importer must provide a description of the product for Internal Revenue Code purposes, as ''roll-your-own tobacco,'' ''cigarette tobacco,'' ''cigarette wrapper,'' ''cigar tobacco,'' or ''cigar wrapper.'' The importer must also state the number of pounds and ounces or kilograms and grams of the product.

(7) *Cigarette papers and cigarette tubes.* For cigarette papers and cigarette tubes, the importer must provide:

(i) The classification of the product for Internal Revenue Code purposes, including either ''cigarette papers'' or ''cigarette tubes'' and an indication of whether the length of the papers or tubes is over 6½ inches;

(ii) The employer identification number (EIN) assigned to the importer by the Internal Revenue Service;

(iii) The name and address of the ultimate consignee; and

(iv) The total taxable quantity of each.

* * * * *

(Approved by the Office of Management and Budget under control number 1513–0064)

■ 77. Section 41.84 is added to read as follows:

§ 41.84 Entry for warehousing.

(a) *General.* Except as provided in paragraph (b) of this section, in the case of an entry for warehousing (that is, tobacco products, cigarette papers, or cigarette tubes transferred directly to a customs bonded warehouse or foreign trade zone), the last day for payment of the tax shall not be later than the 14th day after the last day of the semimonthly period during which the products are removed from the first such warehouse, even if the tobacco products, cigarette papers, or cigarette tubes are removed from that customs bonded warehouse or foreign trade zone for transfer to another customs bonded warehouse or foreign trade zone.

(b) *Entry for warehousing of products destined for export.* Paragraph (a) of this section does not apply to tobacco products, cigarette papers, or cigarette tubes entered for warehousing and then removed for transfer to another custom bonded warehouse or foreign trade zone that are shown to the satisfaction of the Secretary to be destined for export.

(26 U.S.C. 5703(b)(2)(B)(ii), (iii), and (iv))

■ 78. Section 41.86 is revised to read as follows:

§ 41.86 Entry process for releases without payment of tax.

(a)(1) *General.* Except as provided in paragraph (c) of this section, in order for tobacco products or cigarette papers or tubes to be released from customs custody without payment of tax under internal revenue bond, as provided in 26 U.S.C. 5704(c) or (d), the information required by this paragraph must be filed electronically with U.S. Customs and Border Protection (CBP). The information must be filed with CBP at the time of filing the entry or entry summary, as appropriate, and it must be filed along with any other information that is required by CBP for purposes of determining and collecting the Federal excise tax and administering the provisions of the Internal Revenue Code. Any information required under paragraph (a)(2) of this section that is submitted to CBP as part of the entry or entry summary for purposes of meeting CBP requirements will also satisfy the requirements of this section. Regardless of the method of filing, the importer must retain as a record the information required by this section, any information provided to CBP for CBP purposes, and any supporting documentation and such records must be available for inspection upon request by the appropriate TTB officer or a customs officer.

(2) *Information required.* The manufacturer of tobacco products or cigarette papers or tubes or export warehouse proprietor who wishes to obtain the release of tobacco products or cigarette papers or tubes as described in paragraph (a)(1) of this section must provide the following information, as applicable:

(i) The number of the permit issued under 27 CFR part 40 to the manufacturer of tobacco products or export warehouse proprietor, or the TTB-assigned number of the manufacturer of cigarette papers or tubes, to whom the products are shipped or consigned;

(ii) The employer identification number (EIN), assigned by the Internal Revenue Service, of the manufacturer of tobacco products, the manufacturer of cigarette papers or tubes, or the export warehouse proprietor to whom the products are shipped or consigned;

(iii) The name and address of the ultimate consignee, consistent with the name and address on the permit issued under part 40 of this chapter;

(iv) For tobacco products, the number of the permit, issued under subpart K of this part, of the importer;

(v) For tobacco products, the employer identification number (EIN) assigned to the importer by the Internal Revenue Service and provided to TTB by the importer on its permit application to TTB on TTB Form 5230.4;

(vi) A description of the product consistent with the tax classification of the product under the Internal Revenue Code as described in § 41.81 (for example, ''large cigars''); and

(vii) The quantity of the product for Federal excise tax purposes, by sticks or by pounds and ounces (or kilograms and grams), as applicable.

(b) *Releases without payment of tax*—(1) *Tobacco products or cigarette papers or tubes put up in packages.* Tobacco products or cigarette papers or tubes put up in packages, as defined at § 41.11, may be released without payment of tax only for delivery to the proprietor of an export warehouse (as provided in 26 U.S.C. 5704(c)) or, if classified under

chapter 98, subchapter I of the Harmonized Tariff Schedule of the United States (relating to duty on certain articles exported and returned), for delivery to the original manufacturer of such tobacco products or cigarette papers or tubes or to the proprietor of an export warehouse authorized by such manufacturer to receive them (as provided in 26 U.S.C. 5704(d)). If the information required in paragraph (a)(2)(i) through (iii) of this section is not filed with the entry or entry summary, as appropriate, or, if the information required in paragraph (c) of this section is not made available to CBP upon request, the tobacco products, cigarette papers, or cigarette tubes are not eligible for release from customs custody without payment of tax, and no person may remove such products from customs custody without payment of tax.

(2) *Tobacco products or cigarette papers or tubes not put up in packages.* Tobacco products or cigarette papers or tubes not put up in packages, as defined at § 41.11, may not be released from customs custody subject to tax, and no person may obtain release of such products from customs custody. Tobacco products or cigarette papers or tubes not put up on packages may be released from customs custody without payment of tax for delivery to the proprietor of an export warehouse, or to a manufacturer of tobacco products or cigarette papers or tubes, as provided in 26 U.S.C. 5704(c). As a result, if the information required in paragraphs (a)(2)(i) through (iii) of this section is not filed with the entry or entry summary, as appropriate, or, if the information required in paragraph (c) of this section is not made available to CBP upon request, tobacco products or cigarette papers or tubes not put up in packages are not eligible for release from customs custody for consumption, and no person may remove such product from customs custody.

(c) *Filing on paper.* A manufacturer or export warehouse proprietor who wants to obtain the release of tobacco products or cigarette papers and tubes from customs custody without payment of tax under its internal revenue bond, and who does not file electronically, must prepare a notice of release on TTB F 5200.11 and submit the form to the appropriate TTB officer in accordance with the instructions on the form. The appropriate TTB officer will certify on the TTB F 5200.11 that the manufacturer or export warehouse proprietor has TTB authorization to receive the products. No one filing on paper may obtain release of the products under this section until they have received the TTB F 5200.11 certified by the appropriate TTB officer. The manufacturer or export warehouse proprietor must have possession of the TTB F 5200.11, bearing TTB certification, at the time the products are released from customs custody and must make the form available to a customs officer upon request at such time. After release of the products, the TTB F 5200.11 must be retained by the manufacturer or export warehouse proprietor and made available to the appropriate TTB officer or a customs officer upon request.

(Approved by the Office of Management and Budget under control numbers 1513–0025 and 1513–0064)

■ 79. Section 41.204 is revised to read as follows:

§ 41.204 Records and reports in general.

Every importer of tobacco products or cigarette papers or tubes must keep records and, when required by this part, submit reports of all tobacco products released from customs custody under the importer's TTB permit, including information on the release from customs custody, the receipt, and the disposition.

(Approved by the Office of Management and Budget under control numbers 1513–0064 and 1513–0106)

■ 80. Section 41.265 is added to read as follows:

§ 41.265 Processed tobacco importation process.

(a) *General.* In the case of processed tobacco imported into the United States, the importer, if filing electronically, must file with U.S. Customs and Border Protection (CBP) the information specified in paragraph (b) of this section at the time of filing the entry or entry summary, as appropriate, along with any other information that is required by CBP to be filed as part of the entry or entry summary for CBP purposes. If the information required by this section is required by, and filed with, CBP for purposes of meeting CBP requirements, such filing will also satisfy the requirements of this section. Regardless of the method of filing, the importer must retain as a record the information required by this section, any information required as part of the entry or entry summary by CBP for CBP purposes, and any supporting documentation, and must make such records available upon request by the appropriate TTB officer or a customs officer.

(b) *Information required.* The following information is required, as described in paragraph (a) of this section:

(1) The number of the importer's permit issued under subpart K or M of this part;

(2) The employer identification number (EIN) assigned to the importer by the Internal Revenue Service and provided to TTB by the importer on its permit application to TTB on TTB Form 5230.4;

(3) The name and address of the ultimate consignee;

(4) A description of the product as ''processed tobacco'' for Internal Revenue Code purposes; and

(5) The quantity of processed tobacco.

(Approved by the Office of Management and Budget under control number 1513–0064)

Signed: November 14, 2016.

John J. Manfreda,

Administrator.

Approved: November 21, 2016.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade and Tariff Policy).

[FR Doc. 2016–29201 Filed 12–21–16; 8:45 am]

BILLING CODE 4810–31–P

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 710/P.L. 114–278
To require the Secretary of Homeland Security to prepare a comprehensive security assessment of the transportation security card program, and for other purposes. (Dec. 16, 2016; 130 Stat. 1410)

H.R. 875/P.L. 114–279
Cross-Border Trade Enhancement Act of 2016 (Dec. 16, 2016; 130 Stat. 1413)

H.R. 960/P.L. 114–280
Designate the Department of Veterans Affairs community-based outpatient clinic in Newark, Ohio, as the Daniel L. Kinnard VA Clinic (Dec. 16, 2016; 130 Stat. 1424)

H.R. 1150/P.L. 114–281
Frank R. Wolf International Religious Freedom Act (Dec. 16, 2016; 130 Stat. 1426)

H.R. 2726/P.L. 114–282
Apollo 11 50th Anniversary Commemorative Coin Act (Dec. 16, 2016; 130 Stat. 1441)

H.R. 3218/P.L. 114–283
Designate the facility of the United States Postal Service located at 1221 State Street, Suite 12, Santa Barbara, California, as the "Special Warfare Operator Master Chief Petty Officer (SEAL) Louis 'Lou' J. Langlais Post Office Building". (Dec. 16, 2016; 130 Stat. 1446)

H.R. 3784/P.L. 114–284
SEC Small Business Advocate Act of 2016 (Dec. 16, 2016; 130 Stat. 1447)

H.R. 3842/P.L. 114–285
Federal Law Enforcement Training Centers Reform and Improvement Act of 2015 (Dec. 16, 2016; 130 Stat. 1453)

H.R. 4352/P.L. 114–286
Faster Care for Veterans Act of 2016 (Dec. 16, 2016; 130 Stat. 1459)

H.R. 4465/P.L. 114–287
Federal Assets Sale and Transfer Act of 2016 (Dec. 16, 2016; 130 Stat. 1463)

H.R. 4618/P.L. 114–288
To designate the Federal building and United States courthouse located at 121 Spring Street SE in Gainesville, Georgia, as the "Sidney Oslin Smith, Jr. Federal Building and United States Courthouse". (Dec. 16, 2016; 130 Stat. 1481)

H.R. 4680/P.L. 114–289
National Park Service Centennial Act (Dec. 16, 2016; 130 Stat. 1482)

H.R. 4887/P.L. 114–290
To designate the facility of the United States Postal Service located at 23323 Shelby Road in Shelby, Indiana, as the "Richard Allen Cable Post Office". (Dec. 16, 2016; 130 Stat. 1496)

H.R. 4939/P.L. 114–291
United States-Caribbean Strategic Engagement Act of 2016 (Dec. 16, 2016; 130 Stat. 1497)

H.R. 5015/P.L. 114–292
Combat-Injured Veterans Tax Fairness Act of 2016 (Dec. 16, 2016; 130 Stat. 1500)

H.R. 5065/P.L. 114–293
Bottles and Breastfeeding Equipment Screening Act (Dec. 16, 2016; 130 Stat. 1503)

H.R. 5099/P.L. 114–294
Communities Helping Invest through Property and Improvements Needed for Veterans Act of 2016 (Dec. 16, 2016; 130 Stat. 1504)

H.R. 5150/P.L. 114–295
To designate the facility of the United States Postal Service located at 3031 Veterans Road West in Staten Island, New York, as the "Leonard Montalto Post Office Building". (Dec. 16, 2016; 130 Stat. 1508)

H.R. 5309/P.L. 114–296
To designate the facility of the United States Postal Service located at 401 McElroy Drive in Oxford, Mississippi, as the "Army First Lieutenant Donald C. Carwile Post Office Building". (Dec. 16, 2016; 130 Stat. 1509)

H.R. 5356/P.L. 114–297
To designate the facility of the United States Postal Service located at 14231 TX-150 in Coldspring, Texas, as the "E. Marie Youngblood Post Office". (Dec. 16, 2016; 130 Stat. 1510)

H.R. 5591/P.L. 114–298
To designate the facility of the United States Postal Service located at 810 N US Highway 83 in Zapata, Texas, as the "Zapata Veterans Post Office". (Dec. 16, 2016; 130 Stat. 1511)

H.R. 5612/P.L. 114–299
To designate the facility of the United States Postal Service located at 2886 Sandy Plains Road in Marietta, Georgia, as the "Marine Lance Corporal Squire 'Skip' Wells Post Office Building". (Dec. 16, 2016; 130 Stat. 1512)

H.R. 5676/P.L. 114–300
To designate the facility of the United States Postal Service located at 6300 N. Northwest Highway in Chicago, Illinois, as the "Officer Joseph P. Cali Post Office Building". (Dec. 16, 2016; 130 Stat. 1513)

H.R. 5687/P.L. 114–301
GAO Mandates Revision Act of 2016 (Dec. 16, 2016; 130 Stat. 1514)

H.R. 5790/P.L. 114–302
Federal Bureau of Investigation Whistleblower Protection Enhancement Act of 2016 (Dec. 16, 2016; 130 Stat. 1516)

H.R. 5798/P.L. 114–303
To designate the facility of the United States Postal Service located at 1101 Davis Street in Evanston, Illinois, as the "Abner J. Mikva Post Office Building". (Dec. 16, 2016; 130 Stat. 1518)

H.R. 5877/P.L. 114–304
United States-Israel Advanced Research Partnership Act of 2016 (Dec. 16, 2016; 130 Stat. 1519)

H.R. 5889/P.L. 114–305
To designate the facility of the United States Postal Service located at 1 Chalan Kanoa VLG in Saipan, Northern Mariana Islands, as the "Segundo T. Sablan and CNMI Fallen Military Heroes Post Office Building". (Dec. 16, 2016; 130 Stat. 1521)

H.R. 5948/P.L. 114–306
To designate the facility of the United States Postal Service located at 830 Kuhn Drive in Chula Vista, California, as the "Jonathan 'J.D.' De Guzman Post Office Building". (Dec. 16, 2016; 130 Stat. 1522)

H.R. 6014/P.L. 114–307
To allow the Administrator of the Federal Aviation Administration to enter into reimbursable agreements for certain airport projects. (Dec. 16, 2016; 130 Stat. 1523)

H.R. 6130/P.L. 114–308
Holocaust Expropriated Art Recovery Act of 2016 (Dec. 16, 2016; 130 Stat. 1524)

H.R. 6138/P.L. 114–309
To designate the facility of the United States Postal Service located at 560 East Pleasant Valley Road, Port Hueneme, California, as the U.S. Naval Construction Battalion "Seabees" Fallen Heroes Post Office Building. (Dec. 16, 2016; 130 Stat. 1529)

H.R. 6282/P.L. 114–310
To designate the facility of the United States Postal Service located at 2024 Jerome Avenue, in Bronx, New York, as the "Dr. Roscoe C. Brown, Jr. Post Office Building". (Dec. 16, 2016; 130 Stat. 1530)

H.R. 6302/P.L. 114–311
Overtime Pay for Protective Services Act of 2016 (Dec. 16, 2016; 130 Stat. 1531)

H.R. 6304/P.L. 114–312
To designate the facility of the United States Postal Service located at 501 North Main Street in Florence, Arizona, as the "Adolfo 'Harpo' Celaya Post Office". (Dec. 16, 2016; 130 Stat. 1533)

H.R. 6323/P.L. 114–313
To name the Department of Veterans Affairs health care system in Long Beach, California, the "Tibor Rubin VA Medical Center". (Dec. 16, 2016; 130 Stat. 1534)

H.R. 6400/P.L. 114–314
To revise the boundaries of certain John H. Chafee Coastal Barrier Resources System units in New Jersey. (Dec. 16, 2016; 130 Stat. 1535)

H.R. 6416/P.L. 114–315
Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016 (Dec. 16, 2016; 130 Stat. 1536)

H.R. 6431/P.L. 114–316
Promoting Travel, Commerce, and National Security Act of 2016 (Dec. 16, 2016; 130 Stat. 1593)

H.R. 6450/P.L. 114–317

Inspector General Empowerment Act of 2016 (Dec. 16, 2016; 130 Stat. 1595)

H.R. 6451/P.L. 114–318

Federal Property Management Reform Act of 2016 (Dec. 16, 2016; 130 Stat. 1608)

H.R. 6477/P.L. 114–319

Foreign Cultural Exchange Jurisdictional Immunity Clarification Act (Dec. 16, 2016; 130 Stat. 1618)

S. 8/P.L. 114–320

To provide for the approval of the Agreement for Cooperation Between the Government of the United States of America and the Government of the Kingdom of Norway Concerning Peaceful Uses of Nuclear Energy. (Dec. 16, 2016; 130 Stat. 1621)

S. 546/P.L. 114–321

RESPONSE Act of 2016 (Dec. 16, 2016; 130 Stat. 1623)

S. 612/P.L. 114–322

Water Infrastructure Improvements for the Nation Act (Dec. 16, 2016; 130 Stat. 1628)

S. 1635/P.L. 114–323

Department of State Authorities Act, Fiscal Year 2017 (Dec. 16, 2016; 130 Stat. 1905)

S. 2577/P.L. 114–324

Justice for All Reauthorization Act of 2016 (Dec. 16, 2016; 130 Stat. 1948)

S. 2854/P.L. 114–325

Emmett Till Unsolved Civil Rights Crimes Reauthorization Act of 2016 (Dec. 16, 2016; 130 Stat. 1965)

S. 2971/P.L. 114–326

National Urban Search and Rescue Response System Act of 2016 (Dec. 16, 2016; 130 Stat. 1968)

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