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Contents

Federal Register

Vol. 82, No. 85

Thursday, May 4, 2017

Agency for Healthcare Research and Quality

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20892–20894

Army Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20866

Centers for Disease Control and Prevention

NOTICES

Meetings:

- Disease, Disability, and Injury Prevention and Control Special Emphasis Panel; Initial Review, 20895
- Disease, Disability, and Injury Prevention and Control Special Emphasis Panel; Initial Review, 20894–20895

Centers for Medicare & Medicaid Services

PROPOSED RULES

Medicare Program:

- Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2018, SNF Value-Based Purchasing Program, etc., 21014–21100
- Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities: Revisions to Case-Mix Methodology, 20980–21012

Children and Families Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20895–20896

Civil Rights Commission

NOTICES

Meetings:

- Tennessee Advisory Committee, 20864

Coast Guard

PROPOSED RULES

Anchorage Grounds:

- Atlantic Ocean, Jacksonville, FL, 20859–20861

Commerce Department

See International Trade Administration

Community Development Financial Institutions Fund

NOTICES

Funding Availability:

- New Markets Tax Credit Program Calendar Year 2017 Allocation Round, 20968–20978

Community Living Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

- Centers for Independent Living Annual Performance Report; Correction, 20896
- Funding Opportunity Announcement and Grant Application Template for ACL Discretionary Grant Programs; Correction, 20897
- National Survey of Older Americans Act Participants; Correction, 20896

Protection and Advocacy for Traumatic Brain Injury Program Performance Report; Correction, 20896–20897

Defense Department

See Army Department

See Navy Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20866–20867

Meetings:

- Defense Acquisition University Board of Visitors, 20867

Education Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

- Talent Search Annual Performance Report, 20868–20869

Applications for New Awards:

- Indian Education Discretionary Grants Programs: Native American Language Program, 20869–20878

Export-Import Bank

NOTICES

Privacy Act; Systems of Records, 20878–20880

Federal Aviation Administration

RULES

Airworthiness Directives:

- The Boeing Company Airplanes, 20823–20825

Federal Communications Commission

RULES

Comprehensive Reviews:

- Uniform System of Accounts, Jurisdictional Separations and Referral to Federal-State Joint Board, 20833–20843

PROPOSED RULES

Petitions for Reconsiderations of Actions in Rulemaking Proceedings, 20861

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20880–20888

Meetings:

- Consumer Advisory Committee, 20882

Federal Deposit Insurance Corporation

NOTICES

Charter Renewals:

- Systemic Resolution Advisory Committee, 20888

Federal Election Commission

NOTICES

Meetings; Sunshine Act, 20888–20889

Federal Emergency Management Agency

RULES

Suspension of Community Eligibility, 20832–20833

NOTICES

Meetings:

- Technical Mapping Advisory Council, 20904–20905

Federal Motor Carrier Safety Administration**NOTICES**

Qualification of Drivers; Exemption Applications:

Diabetes Mellitus, 20966–20968

Hearing, 20959–20961

Implantable Cardioverter Defibrillators, 20961–20962

Vision, 20962–20966

Federal Railroad Administration**NOTICES**

Meetings:

Railroad Safety Advisory Committee, 20968

Federal Reserve System**NOTICES**

Changes in Bank Control:

Acquisitions of Shares of a Bank or Bank Holding Company, 20889

Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 20889

Federal Trade Commission**NOTICES**

Proposed Consent Agreements:

Emerson Electric Co. and Pentair plc, 20889–20892

Fish and Wildlife Service**PROPOSED RULES**

Endangered and Threatened Species:

90-Day Finding on Petition to Remove Bone Cave

Harvestman from List of Endangered and Threatened Wildlife, 20861–20863

Food and Drug Administration**RULES**

Food Labeling:

Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments, 20825–20829

Indirect Food Additives:

Polymers, 20829–20832

PROPOSED RULES

Food Additive Petitions; Denials:

Natural Resources Defense Council et al., 20847–20859

Health and Human Services Department

See Agency for Healthcare Research and Quality

See Centers for Disease Control and Prevention

See Centers for Medicare & Medicaid Services

See Children and Families Administration

See Community Living Administration

See Food and Drug Administration

See Health Resources and Services Administration

See National Institutes of Health

See Substance Abuse and Mental Health Services Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20898–20899

Health Resources and Services Administration**NOTICES**

Determination of Number of Entities and Recruitment of Entities for Assignment of Corps Personnel Obligated under National Health Service Corps Scholarship Program, 20897–20898

Homeland Security Department

See Coast Guard

See Federal Emergency Management Agency

See Transportation Security Administration

See U.S. Customs and Border Protection

PROPOSED RULES

Privacy Act:

Implementation of Exemptions; Department of Homeland Security/U.S. Immigration and Customs Enforcement–016 FALCON Search and Analysis System of Records, 20844–20846

NOTICES

Privacy Act; Systems of Records, 20905–20909

Housing and Urban Development Department**NOTICES**

Moving to Work Demonstration Program:

Waiver Revisions, 20912–20916

Interior Department

See Fish and Wildlife Service

See Land Management Bureau

International Trade Administration**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Rescission of Administrative Review; 2015–2016, 20865–20866

Request for Comments:

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to United States, 20864–20865

International Trade Commission**NOTICES**

Complaints:

Certain Digital Cameras, Software, and Components Thereof, 20918–20919

Certain Magnetic Tape Cartridges and Components Thereof, 20917–20918

Investigations; Determinations, Modifications, and Rulings, etc.:

Certain Height-Adjustable Desk Platforms and Components Thereof, 20919–20920

Certain RF Capable Integrated Circuits and Products Containing Same, 20920

Land Management Bureau**NOTICES**

Meetings:

Albuquerque District Resource Advisory Council; Postponement, 20916

Dominguez-Escalante National Conservation Area

Advisory Council, Colorado; Postponement, 20916

John Day—Snake Resource Advisory Council, Oregon; Postponement, 20917

National Aeronautics and Space Administration**NOTICES**

Meetings:

International Space Station Advisory Committee, 20920–20921

National Institutes of Health**NOTICES**

Meetings:

National Institute of Allergy and Infectious Diseases, 20899

National Science Foundation**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20921–20922
Meetings:
Proposal Review, 20921

Navy Department**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20867–20868

Presidential Documents**PROCLAMATIONS**

Special Observances:

Law Day, U.S.A. (Proc. 9604), 21105–21106
National Mental Health Awareness Month (Proc. 9603), 21101–21104

EXECUTIVE ORDERS

Committees; Establishment, Renewal, Termination, etc.:

Trade and Manufacturing Policy, Office of; Establishment (EO 13797), 20821–20822

Trade:

Trade Agreement Violations and Abuses: Policy to Address (EO 13796), 20819–20820

Securities and Exchange Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20922–20923

Applications:

Deregistration, 20930–20932

Self-Regulatory Organizations; Proposed Rule Changes:

Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., et al., 20928–20930

C2 Options Exchange, Inc., 20951–20956

Financial Industry Regulatory Authority, Inc., 20948–20951

Nasdaq Stock Market, LLC, 20923–20926

New York Stock Exchange, LLC, 20927

NYSE Arca, Inc., 20932–20945

NYSE MKT, LLC, 20926–20927

Options Clearing Corp., 20945–20948

State Department**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Refugee Biographic Data, 20958
Supplemental Questions for Visa Applicants, 20956–20957

Substance Abuse and Mental Health Services Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20900–20901

Surface Transportation Board**NOTICES**

Adverse Abandonments and Discontinuances:

Hartwell First United Methodist Church; Hartwell Railroad Co. and Great Walton Railroad Co., Inc., in Hart County, GA, 20958–20959

Transportation Department

See Federal Aviation Administration

See Federal Motor Carrier Safety Administration

See Federal Railroad Administration

Transportation Security Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
TSA Canine Training Center Adoption Application, 20909–20910
TSA Pre-Check Application Program, 20910–20911

Treasury Department

See Community Development Financial Institutions Fund

U.S. Customs and Border Protection**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20902–20903
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Exportation of Articles under Special Bond, 20901
Declaration of Unaccompanied Articles, 20901–20902
Importation Bond Structure, 20903–20904

Separate Parts In This Issue**Part II**

Health and Human Services Department, Centers for Medicare & Medicaid Services, 20980–21012

Part III

Health and Human Services Department, Centers for Medicare & Medicaid Services, 21014–21100

Part IV

Presidential Documents, 21101–21106

Reader Aids

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

To subscribe to the Federal Register Table of Contents electronic mailing list, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR**Proclamations:**

9603.....21103
9604.....21105

Executive Orders:

13796.....20819
13797.....20821

6 CFR**Proposed Rules:**

5.....20844

14 CFR

39.....20823

21 CFR

11.....20825
101.....20825
177.....20829

Proposed Rules:

170.....20847
177.....20847
189.....20847

33 CFR**Proposed Rules:**

110.....20859

42 CFR**Proposed Rules:**

409 (2 documents)20980,
21014
411.....21014
413.....21014
424.....21014
488 (2 documents)20980,
21014

44 CFR

64.....20832

47 CFR

1.....20833
32.....20833
65.....20833

Proposed Rules:

73.....20861

50 CFR**Proposed Rules:**

17.....20861

Presidential Documents

Title 3—

Executive Order 13796 of April 29, 2017

The President

Addressing Trade Agreement Violations and Abuses

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* Every trade agreement and investment agreement entered into by the United States, and all trade relations and trade preference programs of the United States, should enhance our economic growth, contribute favorably to our balance of trade, and strengthen the American manufacturing base. Many United States free trade agreements, investment agreements, and trade relations have failed, in whole or in part, to meet these criteria. The result has been large and persistent trade deficits, a lack of reciprocal treatment of American goods and investment, the offshoring of factories and jobs, the loss of American intellectual property and reduced technological innovation, downward pressure on wage and income growth, and an impaired tax base. It is the policy of the United States to negotiate new trade agreements, investment agreements, and trade relations that benefit American workers and domestic manufacturers, farmers, and ranchers; protect our intellectual property; and encourage domestic research and development. It is also the policy of the United States to renegotiate or terminate any existing trade agreement, investment agreement, or trade relation that, on net, harms the United States economy, United States businesses, United States intellectual property rights and innovation rate, or the American people.

Sec. 2. *Conduct Performance Reviews.* The Secretary of Commerce and the United States Trade Representative (USTR), in consultation with the Secretary of State, the Secretary of the Treasury, the Attorney General, and the Director of the Office of Trade and Manufacturing Policy, shall conduct comprehensive performance reviews of:

(a) all bilateral, plurilateral, and multilateral trade agreements and investment agreements to which the United States is a party; and

(b) all trade relations with countries governed by the rules of the World Trade Organization (WTO) with which the United States does not have free trade agreements but with which the United States runs significant trade deficits in goods.

Sec. 3. *Report of Violations and Abuses.* (a) Each performance review shall be submitted to the President by the Secretary of Commerce and the USTR within 180 days of the date of this order and shall identify:

(i) those violations or abuses of any United States trade agreement, investment agreement, WTO rule governing any trade relation under the WTO, or trade preference program that are harming American workers or domestic manufacturers, farmers, or ranchers; harming our intellectual property rights; reducing our rate of innovation; or impairing domestic research and development;

(ii) unfair treatment by trade and investment partners that is harming American workers or domestic manufacturers, farmers, or ranchers; harming our intellectual property rights; reducing our rate of innovation; or impairing domestic research and development;

(iii) instances where a trade agreement, investment agreement, trade relation, or trade preference program has failed with regard to such factors as predicted new jobs created, favorable effects on the trade balance,

expanded market access, lowered trade barriers, or increased United States exports; and

(iv) lawful and appropriate actions to remedy or correct deficiencies identified pursuant to subsections (a)(i) through (a)(iii) of this section.

(b) The findings of the performance reviews required by this order shall help guide United States trade policy and trade negotiations.

Sec. 4. *Remedy of Trade Violations and Abuses.* The Secretary of Commerce, the USTR, and other heads of executive departments and agencies, as appropriate, shall take every appropriate and lawful action to address violations of trade law, abuses of trade law, or instances of unfair treatment.

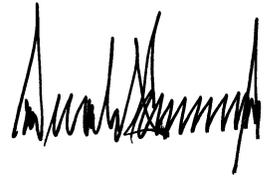
Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be the signature of Donald Trump, located on the right side of the page.

THE WHITE HOUSE,
April 29, 2017.

Presidential Documents

Executive Order 13797 of April 29, 2017

Establishment of Office of Trade and Manufacturing Policy

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Establishment.* The Office of Trade and Manufacturing Policy (OTMP) is hereby established within the White House Office. The OTMP shall consist of a Director selected by the President and such staff as deemed necessary by the Assistant to the President and Chief of Staff.

Sec. 2. *Mission.* The mission of the OTMP is to defend and serve American workers and domestic manufacturers while advising the President on policies to increase economic growth, decrease the trade deficit, and strengthen the United States manufacturing and defense industrial bases.

Sec. 3. *Responsibilities.* The OTMP shall:

(a) advise the President on innovative strategies and promote trade policies consistent with the President's stated goals;

(b) serve as a liaison between the White House and the Department of Commerce and undertake trade-related special projects as requested by the President; and

(c) help improve the performance of the executive branch's domestic procurement and hiring policies, including through the implementation of the policies described in Executive Order 13788 of April 18, 2017 (Buy American and Hire American).

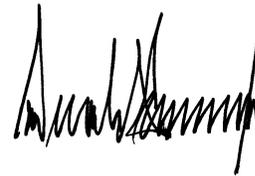
Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
April 29, 2017.

Rules and Regulations

Federal Register

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2016-9570; Directorate Identifier 2016-NM-185-AD; Amendment 39-18866; AD 2017-09-04]

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 707 airplanes and Model 720 and 720B series airplanes. This AD was prompted by a determination that undetected web fatigue cracking caused by oil canning may exist in the aft pressure bulkhead web. This AD requires repetitive detailed inspections for any oil canning or cracking of the aft pressure bulkhead web, and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 8, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 8, 2017.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; 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-2016-9570.

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-2016-9570; 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: George Garrido, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712-4137; phone: 562-627-5232; fax: 562-627-5210; email: george.garrido@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 707 airplanes and Model 720 and 720B series airplanes. The NPRM published in the **Federal Register** on January 6, 2017 (82 FR 1627). The NPRM was prompted by a determination that undetected web fatigue cracking caused by oil canning may exist in the station 1440 aft pressure bulkhead web. The NPRM proposed to require repetitive detailed inspections for any oil canning or cracking of the station 1440 aft pressure bulkhead web, and corrective actions if necessary. We are issuing this AD to detect and correct fatigue cracking of the aft pressure bulkhead web, which could grow in length and ultimately reduce the structural integrity of the web and lead to rapid decompression 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.

Request To Change Service Information Citation

Boeing requested that we spell out the full title of Boeing 707 Alert Service Bulletin A3543 instead of using the shortened "ASB A3543." Boeing pointed out that using the acronym "ASB" instead of spelling out "Alert Service Bulletin" is a change from past practices. Boeing stated that the "A" in front of the service bulletin number is short for "Alert" and doesn't require a new acronym. Boeing added that the shortened citation omitted the airplane model number, which should always be included when referring to service information.

We agree with the request. We have abbreviated the titles of service bulletins to simplify ADs in response to other AD comments. However, we did not intend to remove the airplane model number. Therefore, we have changed the citation throughout this final rule as requested.

Request To Clarify "Required for Compliance (RC) Exempt" Steps

Boeing requested that we change paragraph (j)(4)(ii) of the proposed AD to read "Steps not labeled as RC, or labeled as 'RC Exempt,' may be deviated from" Boeing stated that it intended to include the same treatment for steps labeled "RC Exempt" as for steps not labeled as RC. Boeing asserted that this needed to be explicitly stated in paragraph (j)(4)(ii) of the proposed AD, just as it is in paragraph (j)(4)(i) of the proposed AD.

We disagree because we find that this additional language is not necessary. As paragraph (j)(4)(i) of the proposed AD states, if a step is labeled "RC Exempt," then the RC requirement is removed from that step. Therefore, steps labeled as "RC Exempt" are treated the same as those not labeled RC. We have not changed this AD in this regard.

Conclusion

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

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 707 Alert Service Bulletin A3543, dated September 15, 2016. The service information describes procedures for repetitive detailed inspections for any oil canning or cracking of the station 1440 aft pressure bulkhead web, and related corrective actions. 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 12 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
Inspection for oil canning	6 work-hours × \$85 per hour = \$510 per inspection cycle.	\$0	\$510 per inspection cycle.	\$6,120 per inspection cycle.

We estimate the following costs to do any additional inspections that would be required based on the results of the

initial inspection. These cost estimates are for one oil canning location. We

have no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Oil canning zone determination and inspection	1 work-hour × \$85 per hour = \$85	\$0	\$85
Detailed inspection and eddy current inspection for cracks	13 work-hours × \$85 per hour = \$1,105	0	1,105
High frequency eddy current inspection for crack location, length, and orientation.	2 work-hours × \$85 per hour = \$170	0	170

We have received no definitive data that would enable us to provide cost estimates for certain corrective actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a

substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–09–04 The Boeing Company:

Amendment 39–18866; Docket No. FAA–2016–9570; Directorate Identifier 2016–NM–185–AD.

(a) Effective Date

This AD is effective June 8, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes, certificated in any category, as identified in Boeing 707 Alert Service Bulletin A3543, dated September 15, 2016, and in paragraphs (c)(1) and (c)(2) of this AD.

(1) The Boeing Company Model 707–100 Long Body, –200, –100B Long Body, and –100B Short Body series airplanes; and Model 707–300, –300B, –300C, and –400 series airplanes.

(2) The Boeing Company Model 720 and 720B series airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that undetected web fatigue cracking caused by oil canning may exist in the station 1440 aft pressure bulkhead web. We are issuing this AD to detect and correct fatigue cracking of the aft pressure bulkhead web, which could grow in length and ultimately reduce the structural integrity of the web and lead to rapid decompression of the airplane.

(f) Compliance

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

(g) Repetitive Inspections and Related Investigative and Corrective Actions

At the applicable time specified in paragraph 1.E., "Compliance," of Boeing 707 Alert Service Bulletin A3543, dated September 15, 2016, except as required by paragraph (h)(1) of this AD: Do all applicable actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3543, dated September 15, 2016, except as required by paragraph (h)(2) of this AD.

(1) Do a detailed inspection of the station 1440 aft pressure bulkhead web for any oil canning. Repeat the inspection at the applicable time specified in paragraph 1.E., "Compliance," of Boeing 707 Alert Service Bulletin A3543, dated September 15, 2016.

(2) Do all applicable related investigative actions, including detailed, eddy current, and high frequency eddy current (HFEC) inspections. Repeat the applicable inspections thereafter at the applicable time specified in paragraph 1.E., "Compliance," of Boeing 707 Alert Service Bulletin A3543, dated September 15, 2016.

(3) Do all applicable corrective actions at the applicable time specified in paragraph 1.E., "Compliance," of Boeing 707 Alert Service Bulletin A3543, dated September 15, 2016.

(h) Service Information Exceptions

(1) Where Boeing 707 Alert Service Bulletin A3543, dated September 15, 2016, specifies a compliance time "after the original issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing 707 Alert Service Bulletin A3543, dated September 15, 2016, specifies to contact Boeing for repair instructions, and specifies that action as Required for Compliance (RC), this AD requires repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Special Flight Permit

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be repaired,

but if any crack is found as identified in Boeing 707 Alert Service Bulletin A3543, dated September 15, 2016, concurrence by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is required before issuance of the special flight permit.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: 9-ANM-LAACO-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, Los Angeles ACO, to make those findings. 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) Except as required by paragraph (h) of this AD: For service information that contains steps that are labeled as RC, the provisions of paragraphs (j)(4)(i) and (j)(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. If a step or substep is labeled "RC Exempt," then the RC requirement is removed from that step or substep. 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.

(k) Related Information

For more information about this AD, contact George Garrido, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712-4137; phone: 562-627-5232; fax: 562-627-5210; email: george.garrido@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) Boeing 707 Alert Service Bulletin A3543, dated September 15, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; Internet <https://www.myboeingfleet.com>.

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

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

Issued in Renton, Washington, on April 24, 2017.

Paul Bernado,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017-08828 Filed 5-3-17; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Parts 11 and 101**

[Docket No. FDA-2011-F-0172]

RIN 0910-ZA48

Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Extension of Compliance Date; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; extension of compliance date; request for comments.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the compliance date for the final rule requiring disclosure of certain nutrition information for standard menu items in certain restaurants and retail food establishments. In the **Federal Register** of December 30, 2016, we stated that the compliance date for the final rule would be May 5, 2017. We are extending the compliance date to May 7, 2018. We are taking this action to enable us to consider how we might further reduce the regulatory burden or increase

flexibility while continuing to achieve our regulatory objectives, in keeping with the Administration's policies.

DATES: *Compliance date:* As of May 4, 2017, the compliance date for covered establishments set out in the final rule published December 1, 2014 (79 FR 71156), and extended in final rules published on July 10, 2015 (80 FR 39675) and December 30, 2016 (81 FR 96364), is further extended. Covered establishments must comply with the rule published December 1, 2014 (79 FR 71156), by May 7, 2018.

Comment date: Submit either electronic or written comments regarding this compliance date extension, implementation of the December 2014 final rule, and the various topics flagged in the **SUPPLEMENTARY INFORMATION** section of this document, by July 3, 2017.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of July 3, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

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-2011-F-0172 for "Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Extension of Compliance Date; Request for Comments." Received comments, those filed in a timely manner (see **DATES**), 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: <https://www.gpo.gov/>

[fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf](https://www.regulations.gov/pdfs/pkg/FR-2015-09-18/pdf/2015-23389.pdf).

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.

FOR FURTHER INFORMATION CONTACT: Felicia B. Billingslea, Center for Food Safety and Applied Nutrition (HFS-820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2371.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 1, 2014 (79 FR 71156), we published a final rule requiring disclosure of certain nutrition information for standard menu items in certain restaurants and retail food establishments. The final rule, which is now codified at § 101.11 (21 CFR 101.11), implements provisions of section 403(q)(5)(H) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(5)(H)) and:

- Defines terms, including terms that describe criteria for determining whether an establishment is subject to the rule;
- establishes which foods are subject to the nutrition labeling requirements and which foods are not subject to these requirements;
- requires that calories for standard menu items be declared on menus and menu boards that list such foods for sale;
- requires that calories for standard menu items that are self-service or on display be declared on signs adjacent to such foods;
- requires that written nutrition information for standard menu items be available to consumers who ask to see it;
- requires, on menus and menu boards, a succinct statement concerning suggested daily caloric intake (succinct statement), designed to help the public understand the significance of the calorie declarations;
- requires, on menus and menu boards, a statement regarding the availability of the written nutrition information (statement of availability);
- establishes requirements for determination of nutrient content of standard menu items;
- establishes requirements for substantiation of nutrient content

determined for standard menu items, including requirements for records that a covered establishment must make available to FDA within a reasonable period of time upon request; and

- establishes terms and conditions under which restaurants and similar retail food establishments not otherwise subject to the rule could elect to be subject to the requirements by registering with FDA.

In the preamble to the final rule (79 FR 71156 at 71239 through 71241), we stated that the rule would be effective on December 1, 2015, and also provided a compliance date of December 1, 2015, for covered establishments. The final rule (at § 101.11(a)) defines “covered establishment” as a restaurant or similar retail food establishment that is a part of a chain with 20 or more locations doing business under the same name (regardless of the type of ownership, *e.g.*, individual franchises) and offering for sale substantially the same menu items, as well as a restaurant or similar retail food establishment that is voluntarily registered to be covered under § 101.11(d).

II. Extension of the Compliance Date and Request for Comments

In the **Federal Register** of July 10, 2015 (80 FR 39675), in response to requests from affected entities, we announced our decision to extend the compliance date for the final rule to December 1, 2016.

On December 18, 2015, the President signed the Consolidated Appropriations Act, 2016 (Pub. L. 114–113). Section 747 of that law states that none of the funds made available under the Consolidated Appropriations Act may be used to implement, administer, or enforce the final rule entitled “Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments” until the later of December 1, 2016 or 1 year after the date we publish a Level 1 guidance with respect to nutrition labeling of standard menu items in restaurants and similar retail food establishments.

In the **Federal Register** of May 5, 2016 (81 FR 27067), we announced the availability of the Level 1 guidance document and stated that enforcement of the final rule published December 1, 2014, would commence on May 5, 2017 (81 FR 27067 at 27068). In the **Federal Register** of December 30, 2016 (81 FR 96364), we confirmed that the compliance date would be May 5, 2017.

This interim final rule extends the compliance date to May 7, 2018. We are taking this action consistent with Executive Orders 13777, 13771, and 13563, as well as in response to the

diverse and complex set of stakeholders affected by the rule and continued, numerous, and fundamental questions they raise regarding the final rule and its implementation. The continued, fundamental questions and concerns with the final rule suggest that critical implementation issues, including some related to scope, may not have been fully understood and the agency does not want to proceed if we do not have all of the relevant facts on these matters. Retailers with many different and diverse business models have raised concerns about how the rule lacks flexibility to permit them to provide meaningful nutrition information to consumers given their type of business and different operations. Moreover, we continue to receive many questions about calorie disclosure signage for self-service foods, including buffets and grab-and-go foods. We do not want to proceed with a rule that might turn out to be too inflexible to support innovation in delivering information to consumers. In addition, we have received questions regarding how to distinguish a menu, which requires the posting of calorie information, from advertisements and other marketing pieces, which do not require calorie information. Many of these menu questions are complex and have highlighted for the agency the need for further consideration and clarification. How to address the natural calorie variations for foods has also been raised by stakeholders as an issue that needs additional guidance and clarity. Finally, some entities with certain business models have stated that they continue to have questions about what provisions of the final rule are applicable to them. We believe questions like this still need to be addressed.

The previous extensions, as well as Congressional concern regarding implementation expressed through letters and appropriations law, are a reflection of the challenge in implementing this rule for a diverse industry of approximately 298,600 covered establishments, organized under 2,130 chains, that we estimated to be covered by the 2014 final rule. Executive Order 13777, “Enforcing the Regulatory Reform Agenda” (82 FR 12285, March 1, 2017), sets forth a policy to alleviate unnecessary regulatory burdens. Given the principles and policies set forth in these executive orders, particularly with respect to reducing burdens, reducing costs, maintaining flexibility, and improving effectiveness, we have decided to extend the compliance date to May 7, 2018. The additional time will allow us

to consider what opportunities there may be to address these fundamental and complex questions and reduce the cost and enhance the flexibility of these requirements beyond those reflected in the final rule. Given our decision to reconsider the rule consistent with these Executive Orders, it would not make sense to require establishments covered by our final rule to come into compliance with the rule (for which compliance is not yet required), as well as incur additional ongoing costs to maintain or update compliance, when these requirements may change as a result of our reconsideration of the rule. We solicit comment on the extension of the compliance date.

To assist us in our review, we invite interested parties to submit comments on how we might further reduce the regulatory burden or increase flexibility while continuing to achieve our regulatory objectives to provide consumers with nutrition information so that they can make informed choices for themselves and their families. In particular, and in light of the issues we have noted above, we are interested in hearing about approaches to reduce the regulatory burden or increase flexibility with respect to:

- (1) Calorie disclosure signage for self-service foods, including buffets and grab-and-go foods;

- (2) methods for providing calorie disclosure information other than on the menu itself, including how different kinds of retailers might use different methods; and

- (3) criteria for distinguishing between menus and other information presented to the consumer. (See **ADDRESSES** for instructions on submitting comments.) These questions have been identified by stakeholders as among the fundamental issues that continue to pose significant implementation challenges. As of April 7, 2017, we have received five requests for an extension of the compliance period, which we will add to the docket. In addition, on April 5, 2017, a request to stay the effective date was submitted to FDA (see Docket No. FDA–2017–P–2164); this request is currently under consideration.

To the extent that 5 U.S.C. 553 applies to this extension of the compliance date, the action is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, to the extent that the notice-and-comment and delayed effective date requirements set forth in 5 U.S.C. 553 applies to this action, the implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based

on the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3). Given the imminence of the compliance date (May 5, 2017), and the fact that, as discussed above, a number of regulated establishments continue to raise numerous, complex questions about applicability of the menu labeling requirements and about how to implement them, we have decided that providing an opportunity for public comment would be impracticable and contrary to the public interest. This is because providing immediate notice to covered establishments of the additional time to come into compliance allows for more efficient planning and accounting for implementation of requirements, thus reducing regulatory burden and costs on affected entities. In addition, providing immediate notice that there will be additional time to comply is necessary so that affected entities can avoid incurring immediate costs and efficiently plan and account for implementation of the requirements by the imminent compliance date. Good cause exists to delay the compliance date without comment and effective immediately. In accordance with 21 CFR 10.40(e)(1), however, we note that interested parties may provide comment on the compliance date extension, including whether it should be modified or revoked. In addition, interested parties may submit comments on how we might further reduce the regulatory burden or increase flexibility while continuing to achieve our regulatory objectives with respect to providing consumers with nutrition information so that they can make informed choices for themselves and their families. In addition, as we have done throughout this complex rulemaking process, we will continue to work with stakeholders as we go forward.

III. Economic Analysis of Impacts

We have examined the impacts of the interim final rule under Executive Order 12866, Executive Order 13563, Executive Order 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13771 requires that the costs associated with new regulations shall “be offset by the elimination of existing costs associated with at least two prior

regulations.” We have developed an Economic Analysis of Impacts that assesses the impacts of the interim final rule, including cost savings to industry and foregone benefits to consumers. We estimate at least one type of impact in at least one year to be greater than \$100 million. Thus, we believe that this interim final rule is an economically significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule reduces the burden on covered establishments by further extending the compliance date for the “Food Labeling: Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments” final rule (79 FR 71156, December 1, 2014 (final rule); 80 FR 39675, July 10, 2015 (extending the compliance date to December 1, 2016); 81 FR 96364, December 30, 2016 (clarifying extension of the compliance date to May 5, 2017)), we certify the interim final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$148 million, using the most current (2016) Implicit Price Deflator for the Gross Domestic Product. This interim final rule would not result in an expenditure by industry in any year that meets or exceeds this amount.

This interim final rule extends the compliance date to May 7, 2018, for the final rule requiring disclosure of certain nutrition information for standard menu items in certain restaurants and similar retail food establishments. The principal benefit of this interim final rule will be the reduction in costs to covered establishments associated with extending the compliance date by one year. The total annualized benefit (*i.e.*, cost savings) of this interim final rule, using a 3-percent discount rate over 20 years, would be from \$2 to \$6 million; with a 7-percent discount rate, the annualized benefit would be \$3 to \$8 million. The principal cost of this interim final rule will be the reduction in benefits to consumers associated with extending the compliance date by one

year. The total annualized cost (*i.e.*, foregone benefits) of this interim final rule, using a 3-percent discount rate over 20 years, would be from \$5 to \$15 million; with a 7-percent discount rate, the annualized cost would be \$6 to \$19 million. Extending the compliance date of the “Food Labeling: Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments” final rule by one year reduces the annualized net benefits (discounted at 3 percent) approximately 1 percent, from \$506 million to \$501 million. While average annualized net benefits decrease by \$5 million, they are still positive. We recognize that there may be additional costs and benefits to both consumers and covered establishments that we do not have the data to quantify here. We are presenting the estimated benefits and costs of the menu labeling final rule, which takes effect according to the dates in this interim final rule. These quantitative estimates reflect an assumed baseline in which the menu labeling regulation eventually goes fully into effect. If statutory or other changes that are separate from FDA rulemaking were to impact full implementation, the quantitative benefits estimates would be lower and the quantitative cost estimates higher than shown here. We invite comment on both this Regulatory Impact Analysis and the Regulatory Impact Analysis for the December 2014 final rule.

The full analysis of economic impacts is available in the docket for this interim final rule (Ref. 1) and at <http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm>.

IV. Paperwork Reduction Act

This interim final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Reference

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically

at <https://www.regulations.gov>. FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. FDA, interim economic impact analysis for "Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Extension of Compliance Date; Request for Comment," April 2017. Available at: <http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses>.

Dated: May 1, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017-09029 Filed 5-1-17; 4:15 pm]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. FDA-2016-F-1805]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the food additive regulations to no longer provide for the use of potassium perchlorate as an additive in closure-sealing gaskets for food containers because this use has been abandoned. This action is in response to a petition filed by Keller and Heckman LLP on behalf of the Society of the Plastics Industry, Inc.

DATES: This rule is effective May 4, 2017. Submit either electronic or written objections and requests for a hearing on the final rule by June 5, 2017. See the **ADDRESSES** section, and **SUPPLEMENTARY INFORMATION** section VIII of this document, for further information on the filing of objections.

ADDRESSES: You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections will not be considered. Electronic objections must be submitted on or before June 5, 2017. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of June 5, 2017. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the

delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic objections in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection 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 objection, that information will be posted on <https://www.regulations.gov>.

- If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection 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 objections submitted to the Division of Dockets Management, FDA will post your objection, 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-2016-F-1805 for "Indirect Food Additives: Polymers." Received objections, those filed in a timely manner (see **DATES**), 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 an objection with confidential information that you do not wish to be made publicly available, submit your objections 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: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

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.

FOR FURTHER INFORMATION CONTACT:

Vivian Gilliam, Center for Food Safety and Applied Nutrition (HFS-275), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740-3835, 240-402-1193.

SUPPLEMENTARY INFORMATION:

I. Background

In a document published in the **Federal Register** of June 30, 2016 (81 FR 42585), we announced that we filed a food additive petition (FAP 6B4816) submitted on behalf of Society of the Plastics Industry, Inc. (SPI) by Keller and Heckman LLP, 1001 G Street NW., Suite 500 West, Washington, DC 20001. The petition proposed to amend § 177.1210 (21 CFR 177.1210) to no longer provide for the use of potassium perchlorate as an additive in closure-sealing gaskets for food containers because the use has been intentionally and permanently abandoned.

In response to food additive petitions filed in 1962, FDA authorized the use of 66 substances, including potassium perchlorate, for the use in manufacturing closure-sealing gaskets under § 177.1210 (27 FR 7092, July 26, 1962).

II. Evaluation of Abandonment

Section 409(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(i)) states that we shall, by regulation, establish the procedure for amending or repealing a food additive regulation, and that this procedure shall conform to the procedure provided in section 409 of the FD&C Act. Our regulations specific to administrative actions for food additives provide that the Commissioner of Food and Drugs, on his own initiative or on the petition of any interested person, may propose the issuance of a regulation amending or repealing a regulation pertaining to a food additive (§ 171.130(a) (21 CFR 171.130(a))). These regulations further provide that any such petition must include an assertion of facts, supported by data, showing that new information exists with respect to the food additive or that new uses have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the existing regulation or exemption may justify its amendment or repeal. New data submitted as a food additive petition must be furnished in the form specified in 21 CFR 171.1 and 171.100 for submitting such petitions (§ 171.130(b)). Under these regulations, a petitioner may propose that we amend a food additive regulation if the petitioner can demonstrate that there are “old uses abandoned” for the relevant food additive. Such abandonment must be complete and permanent for any intended uses in the U.S. market. Although section 409 of the FD&C Act and § 171.130 also provide for amending or revoking a food additive regulation based on safety, an amendment or revocation based on abandonment is not based on the safety of the food additive. Instead, the amendment or revocation is based on the fact that regulatory authorization is no longer necessary because the use of the food additive has been permanently and completely abandoned.

Abandonment may be based on the abandonment of certain authorized food additive uses for a substance (*e.g.*, if a substance is no longer used in certain product categories) or on the abandonment of all authorized food additive uses of a substance (*e.g.*, if a substance is no longer being manufactured). If a petition seeks an

amendment to a food additive regulation based on the abandonment of certain uses of the food additive, such uses must be adequately defined so that both the scope of the abandonment and any amendment to the food additive regulation are clear.

The present petition includes the following information to support the claim that the use of potassium perchlorate as a food additive in closure-sealing gaskets for food containers has been abandoned in the U.S. market: (1) None of the companies that originally petitioned for the inclusion of potassium perchlorate in § 177.1210 use potassium perchlorate for food-contact applications in the United States; (2) the sole domestic manufacturer of potassium perchlorate does not market the substance into food contact applications in the United States; (3) the major domestic manufacturers of gaskets do not use potassium perchlorate in the manufacture of their products; and (4) none of the member companies, which include domestic and international companies, surveyed by SPI indicated that they had any knowledge or reason to believe that potassium perchlorate was being used in closures with sealing gaskets for food containers.

First, the petition provided information to show that the original petitioners who filed the food additive petitions that resulted in the listing of potassium perchlorate in § 177.1210 do not use potassium perchlorate for food-contact applications in the United States. The petition stated that three of the original four companies that filed the food additive petitions that resulted in the listing for potassium perchlorate in § 177.1210 are still operating, and that the division of the fourth company that participated in the original petition is no longer in business. The petitioner surveyed the remaining three companies (or their appropriate successor(s) in interest) about their use of potassium perchlorate in closures with sealing gaskets for food containers and asked them to verify that they do not: (1) Currently manufacture potassium perchlorate for use as a component of closures with sealing gaskets for food containers in the United States; (2) currently import potassium perchlorate for use as a component of closures with sealing gaskets for food containers in the United States; (3) intend to manufacture or import potassium perchlorate for use as a component of closures with sealing gaskets for food containers in the United States in the future; or (4) currently maintain any inventory of potassium perchlorate for sale or distribution into commerce that is intended to be

marketed for use as a component of closures with sealing gaskets for food containers in the United States. The petition included signed letters from the three companies confirming agreement with these four points.

Second, the petition asserted that American Pacific Corporation, Western Electrochemical Company (AMPAC) is the sole known domestic manufacturer of potassium perchlorate and provided information to show that AMPAC does not market the substance for food contact applications in the United States. Specifically, the petition included a signed letter from AMPAC stating that it does not manufacture, import, or maintain any inventory of potassium perchlorate for sale or distribution for use in closures with sealing gaskets for food containers in the United States. In addition, AMPAC provided supplemental information stating that, to the best of its knowledge, AMPAC is the sole domestic manufacturer of potassium perchlorate in the United States.

Third, the petition provided information to show that the major domestic manufacturers of gaskets do not use potassium perchlorate in the manufacture of their products. The petition stated that SPI conducted research to identify all major U.S.-based manufacturers of closures with sealing gaskets for food containers. The petition further stated that SPI contacted each manufacturer identified by its research, and that each company confirmed to SPI that it does not use potassium perchlorate in the manufacture of gaskets for food contact materials, and that potassium perchlorate may never have been used for this purpose. According to the petition, these manufacturers believe that they represent the substantial majority of gasket production, not only domestically, but globally as well.

Fourth, the petition stated that SPI surveyed the 53 companies in its Food, Drug, and Cosmetic Packaging Materials Committee (FDCPMC). According to the petition, the FDCPMC companies represent the full range of the packing supply chain of plastic food-contact material manufacturers and their raw material suppliers, and they include international companies with affiliates throughout the world. The petition stated that the survey asked the companies to advise whether they had any actual knowledge or reason to believe that “potassium perchlorate is being manufactured, used, distributed, or imported into the U.S. for use in the manufacture of closures with sealing gaskets for food-contact applications.” No company responded that it had any

knowledge or reason to believe that potassium perchlorate was being used in closures with sealing gaskets for food containers. Moreover, the petition stated that, in its effort to gather supporting information, the petitioner was unable to identify any company with memory of, or records indicating, that potassium perchlorate had ever been used commercially as a component of closures with sealing gaskets.

III. Comments on the Filing Notification

We provided 60 days for comments on the filing notification. We received two comments. For ease of reading, we preface each comment discussion with a numbered "Comment," and the word "Response" appears before FDA's response. The number assigned is for organizational purposes only and does not signify any individual comment's value, importance, or order in which it was received.

(Comment 1) The comment requested that we not make a final decision on the petition until after we make a final decision on the petition (FAP 4B4808) submitted in 2014 by Natural Resources Defense Council et al. (Docket No. FDA-2015-F-0537), asking us to remove certain authorizations, including the use of potassium perchlorate that is the subject of this petition. The comment stated that we are statutorily required to regulate food additives and prevent the use of those that are unsafe and that FDA's failure to make a determination based on safety would fall short of FDA's statutory duty. The comment stated that if we make a decision on the petition based on abandonment before making a decision on FAP 4B4808 based on safety, a company may conclude that the use of potassium perchlorate in closures with sealing gaskets for food containers is generally recognized as safe (GRAS) without notifying us. The comment also stated that making a decision on the abandonment petition first encourages industry to only consider whether a use of a food additive has been abandoned in order to preempt a safety decision.

(Response) FDA disagrees. We are not required to make a final decision on FAP 4B4808 before the current petition. With regard to the assertion that FDA is required to make a safety determination, FDA has numerous responsibilities related to food additives. Each year, FDA receives and responds to hundreds of submissions under the various petition and notification programs it administers. Therefore, if the use of a food additive is no longer authorized in response to an abandonment petition, FDA may determine that it is neither necessary nor an efficient use of its

limited resources to address safety arguments related to an abandoned use.

With regard to the comment's concern that a manufacturer may conclude that the use of potassium perchlorate in closures with sealing gaskets for food containers is GRAS without notifying us, we note that, for a substance to be GRAS based on scientific procedures, the scientific data and information about the use of a substance must be generally available and there must be general recognition among qualified experts that those data and information establish that the substance is safe under the conditions of its intended use (§ 170.30). Prior approval as a food additive does not necessarily mean that the use of a substance is GRAS (see 81 FR 54960 at 54976, August 17, 2016). FDA encourages firms to seek our evaluation of any conclusion of GRAS status before they introduce the substance into the market. In the event that, after the authorization in § 177.1210 has been removed based on abandonment, a manufacturer later wishes to use potassium perchlorate for this intended use, we would expect the manufacturer to seek re-authorization through submission of a food contact notification or food additive petition because this intended use was previously authorized under section 409 of the FD&C Act.

With regard to the assertion that an abandonment petition could be used by industry to preempt a safety determination by FDA, we have the discretion to make a safety determination regardless of whether there is an abandonment petition.

(Comment 2) The comment stated that SPI has not considered overseas use and manufacturing of potassium perchlorate in closures with sealing gaskets for food containers. The comment indicated that SPI had not provided sufficient assurances that the uses of potassium perchlorate had been abandoned.

(Response) FDA disagrees. According to the petition, SPI gathered information about the use of potassium perchlorate used in closures with sealing gaskets for food containers from its member companies, which include international companies with affiliates throughout the world, and from major domestic manufacturers of gaskets, and these manufacturers believe that they represent the substantial majority of gasket production, not only domestically, but globally as well. None of the companies surveyed reported that they had any reason to believe that potassium perchlorate is used to make closures with sealing gaskets for food containers. We note that the comment

did not provide information to show that this use has not been abandoned.

In addition, when we publish a notice of filing of a food additive petition, we notify the World Trade Organization (WTO) of the FAP filing. The WTO provides notice of the potential action (in this case, the removal of authorization for potassium perchlorate in § 177.1210 based upon abandonment) to the WTO contact point for each WTO member country. The WTO contact point for each country distributes the notices to the relevant regulatory agencies and industry bodies within that country. If the proposed action affects a member country's trade of affected products, it would provide comment to the WTO notice by commenting to the appropriate docket established for the petition. We did not receive any comments to the WTO notice on the filing of this petition.

IV. Conclusion

We reviewed the data and information in the petition and other available relevant material to determine whether the use of potassium perchlorate as an additive in closure-sealing gaskets for food containers has been permanently and completely abandoned. Based on the available information, we conclude that the use of potassium perchlorate has been abandoned for use as an additive in closure-sealing gaskets for food containers. Therefore, we are amending part 177 as set forth in this document to no longer provide for the use of potassium perchlorate as an additive in closure-sealing gaskets for food containers.

Because the authorization for this intended use has been removed from § 177.1210 based on abandonment, we do not anticipate that industry will resume this intended use in the future. In the event that, after the authorization in § 177.1210 has been removed based on abandonment, a manufacturer later wishes to use potassium perchlorate for this intended use, we would expect the manufacturer to seek re-authorization through submission of a food contact notification or food additive petition because this intended use was previously authorized under section 409 of the FD&C Act.

V. Public Disclosure

In accordance with § 171.1(h), the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), we will delete from the documents any

materials that are not available for public disclosure.

VI. Analysis of Environmental Impact

We previously considered the environmental effects of this rule, as stated in the **Federal Register** of June 30, 2016, notice of petition for FAP 6B4816. We stated that we had determined, under 21 CFR 25.32(m), that this action “is of a type that does not individually or cumulatively have a significant effect on the human environment,” such that neither an environmental assessment nor an environmental impact statement is required. We have not received any new information or comments that would affect our previous determination.

VII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Objections

If you will be adversely affected by one or more provisions of this regulation, you may file with the Division of Dockets Management (*see ADDRESSES*) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <https://www.regulations.gov>.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

- 1. The authority citation for part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 177.1210 [Amended]

- 2. In § 177.1210, in paragraph (b)(5), in table 1, remove the entry for “Potassium perchlorate.”

Dated: April 28, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017-08988 Filed 5-3-17; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA-2017-0002; Internal Agency Docket No. FEMA-8477]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA’s Community Status Book (CSB). The CSB is available at <https://www.fema.gov/national-flood-insurance-program-community-status-book>.

DATES: The effective date of each community’s scheduled suspension is the third date (“Susp.”) listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW., Washington, DC 20472, (202) 646-4149.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA’s initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date

shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of

the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Mississippi: North Carrollton, Town of, Carroll County.	280028	June 16, 1975, Emerg; April 3, 1978, Reg; May 2, 2017, Susp.	May 2, 2017	May 2, 2017.

-do- =Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: April 24, 2017.

Michael M. Grimm,
Assistant Administrator for Mitigation,
Federal Insurance and Mitigation
Administration, Department of Homeland
Security, Federal Emergency Management
Agency.

[FR Doc. 2017-08951 Filed 5-3-17; 8:45 am]

BILLING CODE 9110-12-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 32, and 65

[WC Docket No. 14-130, CC Docket No. 80-286; FCC 17-15]

Comprehensive Review of the Uniform System of Accounts, Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission

(Commission) completes its proceeding to review the Uniform System of Accounts (USOA) to minimize the compliance burdens on carriers while ensuring that the agency retains access to the information it needs to fulfill its regulatory duties.

DATES: The rules adopted in this document shall become effective on January 1, 2018, with the exception of amendments to §§ 1.1409 and 32.1, which shall become effective following publication in the **Federal Register** of a document announcing approval by OMB of these amendments.

FOR FURTHER INFORMATION CONTACT: Robin Cohn, Wireline Competition Bureau, Pricing Policy Division at (202) 418-2747 or at Robin.Cohn@fcc.gov, or Nicole Ongele, Office of Managing Director at (202) 418-2991 or at Nicole.Ongele@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, WC Docket No. 14-130, CC Docket 80-286; FCC 17-15, adopted February 23, 2017 and released February 24, 2017. The full text of this

document may be downloaded at https://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0228/FCC-17-15A1.pdf. In this present document, we have assessed the effects of our streamlining the part 32 Uniform System of Accounts (part 32 USOA) accounting rules and find that the Commission's actions will result in overall reduced regulatory burdens for both price cap and rate-of-return carriers, including small businesses with fewer than 25 employees. In addition, the Report and Order allows price cap carriers to elect to use GAAP for all regulatory accounting purposes so long as they comply with targeted accounting rules. Because incumbent LECs subject to price cap regulation are among the largest of telecommunications companies, we do not anticipate any impact from this action on small businesses with fewer than 25 employees.

Synopsis

I. Introduction

1. In this Report and Order (Order), we complete our proceeding to review our part 32 Uniform System of Accounts (USOA) to consider ways to minimize the compliance burdens on carriers while ensuring that the agency retains access to the information it needs to fulfill its regulatory duties. Section 220 of the Communications Act of 1934, as amended (the Act), authorizes the Commission to prescribe the system of accounts to be used by carriers subject to the Act, and the USOA and its predecessors have historically performed this function for regulated telephone companies. But the USOA comes with a cost: Many regulated companies must maintain two sets of books—one for financial reporting and another for regulatory purposes—with the attendant costs of additional training for accountants, creating a second set of customized accounting software, and auditing two sets of processes for compliance.

2. We now conclude that, in light of the Commission's actions in areas of price cap regulation, universal service reform, and intercarrier compensation reform, as well as the advancement of robust intermodal competition in the market for telephone services, the duty to maintain two sets of accounts is generally not necessary for price cap carriers. Moreover, with respect to all carriers, we streamline and eliminate outdated accounting rules no longer needed to fulfill our statutory or regulatory duties. By reducing the costly burden of outdated regulatory requirements placed upon carriers, today's reforms give carriers the ability to better allocate scarce resources toward expanding modern networks which are critical to bringing economic opportunity, job creation, and civic engagement to all Americans.

II. Background

3. Section 220 of the Act requires the Commission to "prescribe a uniform system of accounts for use by telephone companies." The Commission adopted its first accounting system in 1935 as parts 31 and 33 of the Commission's rules "when a rigid institutionalized regulatory environment was expected to continue forever." In 1986, the Commission adopted the USOA contained in part 32 to respond to the "introduction of competition and an explosion of new products and services to which the existing systems could not respond without massive modification."

4. The Commission intended the USOA to "accommodate generally

accepted accounting principles (GAAP) to the extent regulatory considerations permit." As the Commission explained: GAAP is that common set of accounting concepts, standards, procedures and conventions which are recognized by the accounting profession as a whole and upon which most nonregulated enterprises base their external financial statements and reports. It directs the recording of financial events and transactions and relates to how assets, liabilities, revenues and expenses are to be identified, measured, and reported. While part 32 specifies a chart of accounts and the types of transactions to be maintained in each account, GAAP allows companies to determine their own system of accounts subject to certain principles.

5. The Commission adopted the USOA "at a time when regulators were required or inclined to organize telecommunications costs in a manner that allowed a logical mapping of these costs to telecommunications rate structures." Accordingly, the USOA was designed to complement rate-of-return regulation and the system of tariffed interstate access charges that incumbent LECs were required to follow at that time. Part 32 required carriers to record their assets, expenses, and revenues in prescribed accounts. Part 64's cost assignment rules apportioned the investment, expenses, and revenues between regulated and nonregulated activities. Part 36 prescribed rules for separating regulated investment, expenses, and revenues between the interstate and intrastate jurisdictions. Part 69 then specified how carriers were to apportion costs assigned to the interstate jurisdiction among the interexchange service category and the access categories and rate elements. In other words, the access rates carriers charged were directly tied to the costs of the carriers, and thus the accurate recording of such costs in the USOA.

6. From 1984 until 1991, virtually all interstate access services were subject to rate-of-return regulation, under which carriers' charges are set to cover an entity's regulated operating expenses and to provide the opportunity to earn a prescribed return on the capital the company uses to provide regulated services. Earnings were monitored through part 32 data that incumbent LECs filed annually through the Commission's Automated Reporting Management Information System (ARMIS). Future carriers' charges were adjusted if profit margins were above or below the prescribed rate of return.

7. In 1991, the Commission adopted price cap regulation for the largest incumbent local exchange carriers

(LECs) while making it optional for other incumbents. Price cap regulation is a form of incentive regulation that relies on a series of Price Cap Indexes (PCIs) to limit the prices that these carriers charge for services to levels that are presumed to be just and reasonable. Today, more than 95 percent of access lines are served by price cap carriers.

8. Price cap regulation eliminated the direct link between changes in allocated accounting costs and changes in price, but as originally implemented, it did not sever the connection between accounting costs and prices entirely. The 1991 LEC price cap plan required earnings above prescribed levels to be shared with ratepayers and provided for upward adjustment of PCIs if earnings fell below a prescribed level. LECs were also permitted to file above-cap rates if cost-based showings demonstrated that a rate within the cap would be confiscatory. In 1997, the Commission eliminated the sharing mechanism, and in 1999, the Commission eliminated the low-end adjustment for incumbent LECs that received and exercised pricing flexibility. This had the practical effect of severing the connection between prices and the need to account for costs from a regulatory point of view.

9. In the years following passage of the Telecommunications Act of 1996, the Commission reviewed and streamlined its accounting rules on several occasions. In 1997, the Commission clarified that "only incumbent local exchange carriers" are subject to specific USOA requirements and other accounting rules. In 1999, the Commission "greatly streamline[d]" its depreciation requirements for price cap carriers, and established a waiver process whereby these carriers could obtain the ability to set their own depreciation rates in accordance with GAAP. In 2000, the Commission streamlined part 32 obligations by eliminating the expense matrix filing requirement, reducing the cost allocation manual audit requirement, relaxing certain affiliate transaction requirements for services, and eliminating the reclassification requirement for certain plant under construction. In 2001, it consolidated and streamlined Class A accounting requirements, relaxed additional aspects of the affiliate transaction rules, reduced the cost of regulatory compliance with cost allocation rules for mid-sized incumbent LECs, and reduced financial reporting requirements. And in 2008, the Commission forbore from applying its cost assignment rules and financial reporting rules to AT&T, Verizon, and Qwest, finding that its need for cost data had significantly diminished with

continuing refinement of price cap ratemaking and universal service reforms.

10. In 2012, USTelecom filed a petition pursuant to section 10 of the Act requesting that the Commission forbear from enforcing certain “legacy telecommunications regulations.” In the USTelecom Forbearance Order, the Commission extended the forbearance it had granted to AT&T, Verizon, and Qwest to other price cap carriers, but declined to forbear from applying the USOA to these carriers. Nevertheless, the Commission “acknowledge[d] that further streamlining of our rules is likely appropriate,” and promised to “conduct a comprehensive review of the Part 32 Uniform System of Accounts” with the aim of “minimiz[ing] the compliance burdens of our regulations while ensuring our continued access to the relevant financial information necessary to fulfill our duties.”

11. On September 15, 2014, the Commission published the *Comprehensive Review of Uniform System of Accounts*, Notice of Proposed Rulemaking, 79 FR 54942 (2014 NPRM), initiating the instant proceeding to reform its rules to ease the accounting burdens on carriers. First, the 2104 NPRM proposed to streamline the Commission’s USOA accounting rules while preserving their existing structure. In this regard, the 2014 NPRM proposed to consolidate Class A and Class B accounts, to revise our rules regarding continuing property records for price cap carriers, and to better align with GAAP the USOA’s asset accounting rules, its Allowance-for-Funds-Used-During-Construction (AFUDC) rules, its materiality rules, and its rules requiring that carriers submit all prior period adjustments (PPAs) and unusual or extraordinary items to the Commission for review and approval. It sought comment on whether to better align the USOA’s depreciation and cost of removal-and-salvage accounting rules with GAAP. Second, the 2014 NPRM also sought focused comment on additional specific requirements that should be applied to price cap carriers. These included “eliminating the requirement that price cap carriers comply with the USOA and imposing targeted accounting requirements that fit our specific statutory needs.” Third, it sought comment on several related issues, including state requirements, rate effects, implementation, and legal authority. The Commission received ten comments and seven reply comments in response to the 2014 NPRM.

II. Discussion

12. In this Order, we make significant revisions to our part 32 USOA accounting rules and take a number of steps to substantially reduce the accounting burdens on incumbent LECs. First, we streamline the USOA for all carriers, amending 39 rules effective January 1, 2018. Second, we allow price cap carriers to elect to use GAAP for all regulatory accounting purposes so long as they comply with targeted accounting rules. These additional reforms will eliminate burdensome accounting requirements that serve no federal purpose for electing price cap carriers.

13. The reforms we adopt herein will significantly reduce the regulatory burdens associated with maintaining separate sets of financial accounts. As previously noted, while part 32 specifies a chart of accounts and the types of transactions to be maintained in each account, GAAP allows companies to determine their own system of accounts subject to certain principles in the form of an overarching system of broad accounting guidelines that address the recording of assets, liabilities, and stockholders’ equity. Further, GAAP allows carriers to record financial transactions in a manner that reflects the broader nature of the enterprise, while part 32 compliance requires carriers to maintain two separate sets of financial and accounting books for federal regulatory purposes. Commenters emphasized the burdensome nature of this requirement, which we acknowledge here.

A. Streamlining the USOA

14. In this section, we adopt revisions to part 32 that significantly streamline the accounting requirements applicable to incumbent LECs. Specifically, we adopt our proposals to consolidate Class A and Class B accounts and to revise our rules regarding continuing property records for price cap carriers. We better align with GAAP the USOA’s asset accounting rules, its AFUDC rules, and its materiality rules. And we decline to amend the USOA’s depreciation and cost of removal-and-salvage rules. These revisions, with the exception of the continuing property records rules, will apply to all carriers subject to part 32’s USOA, but not to any price cap carriers that elect to use GAAP accounting.

1. Consolidating the Class A and Class B Accounts

15. Part 32, as authorized by section 220(h) of the Act, divides incumbent LECs into two classes for accounting purposes based on annual revenues: Class A (carriers with annual revenues

equal to or above \$152.5 million) and Class B (smaller carriers). These rules require Class A carriers to generally maintain 138 accounts, which provide more detailed records of investment, expense, and revenue than the 80 accounts that smaller Class B carriers are required to maintain. When the Commission adopted this regime, it drew this line to “adopt a far less burdensome system” for smaller carriers—but one that was nevertheless sufficient to meet its statutory obligations. The Commission has gradually altered these requirements as regulatory needs and market conditions have changed.

16. We now eliminate the classification of carriers, so that all carriers subject to part 32’s USOA will be required to keep only the streamlined Class B accounts and will otherwise be treated as Class B carriers for purposes of part 32. Collapsing the distinction between Class A and Class B carriers will simplify our rules and reduce the number of accounts that Class A carriers must keep by one-third. Doing so will ensure a more uniform treatment of accounts for carriers subject to the USOA, simplifying both compliance for carriers and oversight by the Commission. Furthermore, we find that eliminating Class A treatment is sufficient to meet our regulatory needs, since no rate-of-return carrier (*i.e.*, those where cost accounting is most important) is required by the Commission’s rules today to keep Class A accounts.

17. Ad Hoc disagrees, arguing that eliminating the distinction would prevent the Commission from carrying out its statutory duties. Ad Hoc argues that we should retain the Class A accounts for cable and wire facilities, depreciation, amortization, amortizable assets, and revenue reporting for the basic local exchange category that includes private line revenue because doing so has “obvious import, both for the setting of pole and conduit rates and for the ongoing special access proceeding.”

18. Contrary to Ad Hoc’s contentions, maintenance of accounts at the Class B level, coupled with the Commission’s ability to require carriers to produce additional accounting data when there is an express federal need, will enable us to ensure that Class A carriers’ rates are just and reasonable and not unreasonably discriminatory. Indeed, no rate-of-return carrier currently qualifies as a Class A carrier, although the Commission’s need for part 32 accounting data are unquestionably greater for carriers subject to rate-of-return regulation and legacy universal

service mechanisms that tie federal support to a carrier's reported costs. And Ad Hoc offers nothing beyond mere assertions that the rates would differ in any material way with Class B treatment, and ignores the fact that the Commission neither relied on part 32 accounts when formulating its special access data collection nor relied on any existing part 32 Class A account in the 2014 NPRM. We accordingly find Ad Hoc's assertions speculative and baseless.

19. Furthermore, we conclude that section 402(c) of the Telecommunications Act of 1996 does not prohibit us from eliminating the distinction between Class A and Class B carriers. That section states that "[i]n classifying carriers according to section 32.11 of [the FCC's] regulations . . . the Commission shall adjust the revenue requirements to account for inflation . . . annually." In the 2014 NPRM, the Commission did "not read this provision to require the Commission to classify carriers for purposes of Part 32 accounting rules, but instead to require annual adjustments so long as the Commission continues to classify carriers for these purposes." The only party to address this issue agreed with this interpretation. We adopt it now.

2. Continuing Property Records for Price Cap Carriers

20. In the USTelecom Forbearance Order, the Commission concluded that forbearance from the continuing property records requirements in § 32.2000(e) and (f) was warranted for price cap carriers, as long as they could demonstrate in compliance plans how they would "maintain the records necessary to track substantial assets and investment in an accurate, auditable manner that enables them to verify account balances in their Part 32 Uniform System of Accounts, make such property information available to the Commission upon request, and ensure maintenance of such data." In the 2014 NPRM, the Commission sought comment on memorializing these requirements in a rule. USTelecom supports requiring price cap carriers to maintain property records necessary to track substantial investments in an auditable fashion that enables verification and the ability to make such information available to the Commission upon request. These data can be maintained by utilizing GAAP, according to USTelecom. No party opposed the property records proposal advanced in the 2014 NPRM.

21. As proposed in the 2014 NPRM, we revise part 32 to require price cap carriers with a continuing part 32

accounting obligation to maintain continuing property records necessary to track substantial assets and investments in an accurate, auditable manner that enables them to verify their accounting books, make such property information available to the Commission upon request, and ensure the maintenance of such data. This rule change reflects the expectations and commitments connected with the forbearance relief we granted in the USTelecom Forbearance Order.

22. We decline at this time to require price cap carriers to file compliance plans, as proposed by the 2014 NPRM, to the extent they have not done so. No commenter addressed this issue. In the absence of record support for the proposal, we decline to adopt any compliance plan filing requirement.

3. Aligning the USOA More Closely With GAAP

23. In the 2014 NPRM, the Commission proffered several different proposals for aligning the USOA more closely with GAAP. We adopt the proposals to align with GAAP the USOA's asset accounting rules, its AFUDC rules, and its materiality rules. *First*, we align our definition of original cost to align with GAAP so that carriers carry an asset at its purchase price when it was acquired, even if its value has increased or has declined when it goes into regulated service. *Second*, we allow carriers to reprice an asset at market value after a merger or acquisition. The record is barren of evidence that these requirements for carriers to price assets differently than they would in the ordinary course of business retain any value.

24. *Third*, we find that using GAAP principles to determine AFUDC should be the applicable standard. We revise the rules accordingly. As the Commission noted at the time, the resulting difference in accounting is immaterial from a regulatory perspective but may increase the administrative burdens of compliance for carriers otherwise required to meet GAAP standards.

25. *Fourth*, we revise our rules to incorporate the concept of materiality. As USTelecom explains, "USOA has no materiality standard and requires all transactions be booked regardless of any materiality consideration. This forces carriers to justify every accounting discrepancy, no matter how trivial and immaterial, thereby adding unnecessary costs to the preparation and audit of a carrier's accounting records." We agree and incorporate the GAAP standard of materiality for price cap carriers. We believe the flexible GAAP standard

offers the "case-by-case" standard proposed by the Nevada Public Utilities Commission—and we agree with the state commission that the Commission will "ultimately be[] the arbiter" of whether a carrier has complied with GAAP's materiality standard.

26. We also agree with Alexicon that "it would be beneficial to NECA and its pool members if the Commission adopted a definition of materiality that provided guidance related to NECA's review procedures." Indeed, more particular guidance may be especially important for carriers receiving legacy universal service support because federal support is tied to the reported costs of such carriers. We adopt the general materiality guidelines promulgated by the Auditing Standards Board. Materiality levels are in large part a matter of professional judgment, and according to generally accepted auditing standards, may consider such factors as:

(1) The elements of the financial statements (for example, assets, liabilities, equity, income, and expenses) and the financial statement measures defined in generally accepted accounting principles (for example, financial position, financial performance, and cash flows), or other specific requirements;

(2) Where there are financial statement items on which, for the particular entity, users' attention tends to be focused (for example, for the purpose of evaluating financial performance);

(3) The nature of the entity and the industry in which it operates; and

(4) The size of the entity, nature of its ownership, and the way it is financed.

Because independent auditors are required to undertake assessments of materiality and risk in all audit engagements, their judgment can and should be relied upon when determining materiality levels for purposes of regulatory reporting and review.

27. In contrast, we decline at this time to revise the USOA's depreciation procedures or its rules for cost of removal-and-salvage accounting. As the Rural Associations argue, and we agree, revising USOA's depreciation rules might result in unpredictable changes in rates and universal service funding mechanisms—potentially rendering universal service support unpredictable absent further study. And we find the record too sparse to quell the concern we recognized in the 2014 NPRM that changing the USOA's rules for cost of removal-and-salvage accounting could have a significant impact on pole attachment rates.

28. We are unconvinced that the generic opposition in the record to the wholesale adoption of GAAP for rate-of-return carriers warrants rejecting the targeted reforms we adopt in this Section. Nor are we convinced by the Rural Associations' argument that no changes should be made to the USOA for rate-of-return carriers. The association does not identify any of the reforms we are adopting as significant, nor do we find based on the record any reason to think that these paperwork-reducing reforms will not be beneficial to rural carriers. Further, we do not anticipate any significant rate effects resulting from these efforts to further align the USOA with GAAP principles.

B. Elective Use of Targeted Accounting Rules for Price Cap Carriers

29. In the 2014 NPRM, the Commission sought comment on either maintaining the USOA for price cap carriers or replacing it with a more limited set of accounting rules targeted to our particular statutory needs. Based on developments in the market and the nature of telephone rate regulation, and in light of the record before us, we conclude that we should let price cap carriers elect to use targeted accounting rules in lieu of the strictures and the second set of books required by the USOA.

30. Indeed, all evidence in the record demonstrates that continued application of the USOA to price cap carriers is a substantial and unjustifiable burden. ACS, for example, "incurs substantial and ongoing costs maintaining an entire second set of account books that meet the requirements of the USOA. The information they contain has no bearing on ACS's corporate planning, financial results, or service rates." CenturyLink appends to its comments an appendix of the separate accounting entries it must maintain to comply with USOA and notes the "over 400 GAAP specific account codes" it must document so that its accountants can translate entries from one set of books to the other. And AT&T explains how it must pay software engineers up to \$24 million a year to "bolt on" changes to vendor general ledger packages and to maintain the USOA on top of its existing GAAP-compliant accounts.

31. We conclude that none of the three particular statutory obligations nor the regulatory requirement identified in the 2014 NPRM justify the requirement that price cap carriers comply with the USOA. Instead, we conclude that price cap carriers may elect to comply with GAAP accounting, subject to a commitment to mitigate any impact election would have on pole attachment

rates. We address these four issues in turn.

32. *Pole Attachment Rates.* Section 224 of the Act allows state commissions to regulate pole attachment rates so long as they certify to the Commission that they will do so; elsewhere, the Commission's rules apply. Under the Commission's rules, pole attachment rates are set in the first instance through private negotiation using cost data reported by carriers. Because many poles and conduits are owned by electric or other utilities not regulated by the Commission, our rules do not require all pole attachments to be based on USOA data, but instead require that the "data and information should be based upon historical or original methodology" and "should be derived from ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies." For incumbent LECs, however, the Commission has relied on data from "various Part 32 accounts (e.g., gross pole investment, gross plant investment, accumulated depreciation—poles, maintenance expense—poles etc.)." And the Commission has used the USOA data to modify the formula by which pole attachment rates are calculated.

33. USTelecom and AT&T contend that for price cap carriers, the use of a rate-of-return-based formula for pole attachments does not preclude the use of GAAP. Verizon agrees with USTelecom, contending that the formulae used to derive pole attachment rates could be populated with GAAP-based data. USTelecom also argues that there is no evidence that relying upon GAAP would alter rates price cap carriers charge for pole attachments, while AT&T contends that there is no basis to believe that pole attachment rates calculated based on GAAP accounting would not be just and reasonable. ACS also supports allowing price cap carriers to use GAAP. CenturyLink proposes to address concerns about possible harms to pole attachment users during a transition to the use of GAAP by capping pole attachment rates at their current levels plus an annual inflation adjustment in states subject to federal regulation, except to the extent that rate increases are justified. On the other hand, NCTA urges the Commission to continue compliance with part 32 accounting in connection with pole attachment data, while NASUCA argues that targeted accounting requirements would be more complicated and costly than maintaining the current mechanisms.

34. We find that USOA accounting data are not necessary for the continued development of pole attachment rates in

accordance with the statute. Nothing in section 224 directs or requires us to rely on the USOA, and we see no reason to subject one set of pole and conduit owners to onerous accounting obligations just because they happen to operate in a federal-default state or happened to have provided telephone service 21 years ago. Nor is there any reason to think the continued maintenance of USOA data for pole attachments is necessary for any future reforms. The Commission successfully collected data from hundreds of carriers on demand in the special access proceeding, and it could require similar disclosure of pole attachment costs if the need should arise.

35. Nonetheless, we share the concern of some commenters that a change in accounting rules could lead to rate shock—a large swing in rates as price cap carriers transition from one accounting system to another. This possible rate differential is due to a number of factors, such as depreciation rates, cost of removal, and return on investment. Pole attachment rates play a significant role in the deployment and availability of voice, video, and data networks, and sharp changes in pole attachment rates may distort infrastructure investment decisions and in turn could negatively affect the availability of advanced services and broadband, contrary to the policy goals of the Act.

36. As such, we condition any price cap carrier's election of GAAP accounting on compliance with one of two framework options to mitigate any disruption in pole attachment rates from the election. The first option is for electing carriers to calculate an Implementation Rate Difference between the attachment rates calculated by the price cap carrier under the USOA and under GAAP as of the last full year preceding the carrier's initial opting-out of part 32 USOA accounting requirements. We further require electing carriers to adjust their annually computed GAAP-based rates by the Implementation Rate Difference for a period of 12 years after the election. This framework largely parallels the plan offered by industry representatives to mitigate any pole attachment rate increases due to fluctuations and timing differences associated with the treatment of depreciation rates, the cost of removal, and salvage when GAAP is utilized instead of part 32. It relies on the half-life of a typical pole to establish the 12-year term (as a means of ensuring against double recovery). We find this option is an appropriate means of mitigating rate shock to attaching ISPs

while still allowing the price cap carrier to shed its USOA obligations.

37. As a second option, price cap carriers may comply with GAAP accounting for all purposes other than those associated with setting pole attachment rates while continuing to use the part 32 accounts and procedures necessary to establish and evaluate pole attachment rates. Carriers have a period of 12 years in which they can opt into GAAP accounting for pole attachment rates and would be required to utilize the Implementation Rate Difference for the remaining portion of the 12 years after they have chosen to move to GAAP accounting. We find that this approach offers flexibility for price cap carriers who do not wish to immediately transition to GAAP for purposes of setting pole attachment rates.

38. We emphasize that a shift in accounting methodology (here, from USOA to GAAP) does not change what costs may be included in pole attachment rates—instead, it changes only how and when those costs are recognized. We thus expect that shifting the accounting method is unlikely to result in abrupt changes in pole attachment rates in the near term, and that rates will remain steady over the long-run. Price cap carriers have explained that shifting accounting methods is “not an effort to increase pole attachment rates” and “not an attempt to do some other rate- or cost-shifting,” and we intend to monitor pole attachment rates and hold them to that promise.

39. Finally, to facilitate transparency of pole attachment rates during the transition from USOA to GAAP, a pole attachers may request that a price cap carrier submit its pole attachment accounting data for a particular state to this Commission for three years following the effective date of the rule permitting a price cap carrier to elect GAAP accounting. Thus, if a pole attachers informs the Commission of a suspected problem with pole attachment rates, the Commission will require the price cap carrier to file its pole attachment data for the state in question. This requirement will assist the parties and the Commission in monitoring and evaluating any abrupt rate changes that may occur. If it proves necessary, the Commission may extend this obligation for an additional three years.

40. *Other Issues.* We conclude that USOA accounting data is unnecessary to ensure compliance with section 254(k) of the Act, which prohibits a telecommunications carrier from “us[ing] services that are not competitive to subsidize services that

are subject to competition.” As the 2014 NPRM explained, the Commission has never found it necessary to seek accounting data to address allegations of violations of section 254(k). In other words, USOA data have not been needed to ensure compliance with section 254(k), even right after the end of legal telephone service monopolies in the late 1990s. Given the advent of even more intermodal competition, we do not foresee a need for USOA data to resolve any section 254(k) violations going forward.

41. The Commission also sought comment on whether the harm intended to be addressed by section 272(e)(3) continues to be a concern, or whether the Commission should consider forbearing from this requirement. In the record, the BOCs primarily focused on alternatives to antiquated part 32 accounting, rather than addressing forbearance from section 272(e)(3). In evaluating the lack of utility of part 32 accounting rules, our attention is also focused on regulatory requirements such as section 272(e)(3) that, similar to the USOA, have outgrown their usefulness.

42. Before 1996, the BOCs were prohibited from entering the long-distance market (*i.e.*, from offering interexchange service) out of concern that they could use their local monopoly to subsidize competitive operations in the long-distance market. The Telecommunications Act created a path for the BOCs to enter that market, requiring, among other things, that a BOC that offers its long-distance service to “impute to itself . . . an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service.”

43. We conclude that we should forbear from the continued application of section 272(e)(3)'s imputation requirements. No party commented on whether the Commission should forbear. The rationales for removing the accounting requirements associated with section 272(e)(3) are equally applicable to considerations of forbearing from the requirements of the subsection completely. In the USF/ICC Transformation Order, the Commission placed terminating intercarrier compensation charges on a path toward bill-and-keep, which greatly diminishes the need for imputation charges. Furthermore, many other entities provide integrated long-distance service, such as non-BOC LECs, cable operators, over-the-top voice over Internet Protocol companies, and commercial mobile radio service providers; these entities are not required to impute charges

between their local and long-distance affiliates (to the extent they even offer those services through separate affiliates). In the last 20 years, increased competition in access markets as a result of legislative, regulatory, and technological changes has reduced the need for section 272 imputation requirements to prevent cross-subsidization between incumbent LECs' local and long distance services. Thus, continued enforcement of the section 272(e)(3) imputation requirements is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory. Given these changes in the regulatory landscape and the diminished importance of imputation requirements to prevent marketplace harms, section 272(e)(3) is not necessary for the protection of consumers, and forbearance will be in the public interest. Accordingly, we determine that forbearing from the continued application of these requirements is appropriate.

44. Finally, we terminate the conditions that the Commission placed on a variety of carriers granted forbearance from our cost allocation rules. Forbearance was expressly premised on the continued availability of part 32 accounting data and the filing of compliance plans consistent with that condition. AT&T, Qwest and Verizon filed compliance plans that detailed their commitment to continue to maintain part 32 accounting data. In the 2014 NPRM, the Commission invited parties to comment on how changes to the part 32 requirements would affect the commitments made in compliance plans filed in connection with forbearance proceedings. Commenters directly addressing this issue support the action taken herein. Although we speculated in 2013 that “there may be a ‘federal need for this accounting information in the future to adjust our existing price cap regime or in our consideration of reforms moving forward,’” time has proven that prediction untrue. And continuing to maintain these costly requirements on the speculation that at some point, some day, the Commission might do something with them fails any cost-benefit analysis.

C. Other Considerations

45. We decline requests to reconsider other deregulatory actions by the Commission in this proceeding. NASUCA broadly argues that it opposes

the rationale behind the 2014 NPRM because the Commission has already minimized the compliance burden below the level needed for its regulatory duties, and urges the Commission to reverse course on other information requirements, pointing to ARMIS forbearance and other recent forbearance decisions. The issues NASUCA raises are rejected as being overly vague and beyond the scope of the 2014 NPRM. In any event, NASUCA has not presented sufficient support for its arguments to allow the Commission to act on these requests, instead merely stating its objections to the proposed reforms in a conclusory manner and failing to suggest concrete alternative solutions.

IV. Referral to the Joint Board

46. We recognize that eliminating the distinctions between Class A and Class B accounts and allowing all carriers to utilize the more streamlined requirements of Class B accounts has implications for the Commission's jurisdictional separations rules pursuant to part 36. For instance, many of the separations rules also designate accounts by Class A and Class B categories, and those rules likely would need to be modified to be consistent with the revised part 32 regulations. Accordingly, pursuant to section 410(c) of the Act, we refer to the Joint Board the issue of examining jurisdictional separations rules in light of the reforms adopted to the part 32 regulations in this Report and Order. We ask the Joint Board to consider the reforms adopted in this Report and Order and to consider how such reforms impact part 36 and consequently the rule changes necessary to ensure the jurisdictional separations rules are consistent. We request that the Joint Board prepare a recommended decision within nine months of publication in the **Federal Register** regarding how and when the Commission's jurisdictional separations rules should be modified to reflect the issues in the referral.

V. Procedural Matters

A. Final Regulatory Flexibility Analysis

47. As required by the Regulatory Flexibility Act of 1980 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the 2014 NPRM. The Commission sought written public comment on the possible significant economic impact on small entities regarding the proposals in the 2014 NPRM, including comments on the IRFA. Pursuant to the RFA, a Final Regulatory Flexibility Analysis (FRFA) is set forth in Appendix C of the

Commission's Report and Order, WC Docket No. 14–130, CC Docket No. 80–286; FCC 17–15, adopted February 23, 2017 and released February 24, 2017.

B. Final Paperwork Reduction Act Analysis

48. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

49. In this present document, we have assessed the effects of our streamlining the part 32 USOA accounting rules and find that the Commission's actions will result in overall reduced regulatory burdens for both price cap and rate-of-return carriers, including small businesses with fewer than 25 employees. In addition, the Report and Order allows price cap carriers to elect to use GAAP for all regulatory accounting purposes so long as they comply with targeted accounting rules. Because incumbent LECs subject to price cap regulation are among the largest of telecommunications companies, we do not anticipate any impact from this action on small businesses with fewer than 25 employees.

C. Congressional Review Act

50. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

VI. Ordering Clauses

51. Accordingly, *it is ordered that*, pursuant to the authority contained in sections 10, 201, 219–220, 224, 254(k), 272(e)(3), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 160, 201, 219–220, 224, 254(k), 272(e)(3), 403, this Report and Order *is adopted*.

52. *It is further ordered that*, pursuant to the authority contained in sections 10, 201, 219–220, 224, 254(k), 272(e)(3), and 403 of the Communications Act of

1934, as amended, 47 U.S.C. 160, 201, 219–220, 224, 254(k), 272(e)(3), 403, 47 CFR parts 1, 32, and 65, *are amended*, effective on a date (“Effective Date”) following publication in the **Federal Register** of a document announcing approval by the Office of Management and Budget (OMB) of these rules, which contain requirements involving Paperwork Reduction Act burdens, or on January 1, 2018, whichever is later, with the exception of amendments to §§ 1.1409 and 32.1, which the Effective Date shall be following publication in the **Federal Register** of a document announcing approval by OMB of these amendments.

53. *It is further ordered that* the Commission *shall send* a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

54. *It is further ordered that* the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

55. *It is further ordered that*, pursuant to section 410(c) of the Communications Act of 1934 as amended, 47 U.S.C. 410(c), the issues specified in Section IV of this Report and Order are hereby referred to the Federal-State Joint Board on Separations for preparation of a recommended decision to be produced within nine months of publication in the **Federal Register**.

56. *It is further ordered that*, should no petitions for reconsideration, applications for review, or petitions for judicial review be timely filed, this proceeding shall be *terminated* and its docket closed.

List of Subjects in 47 CFR Parts 1, 32, and 65

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 32, and 65 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(j), 160, 201, 225, 303, and 309.

■ 2. Section 1.791 is revised to read as follows:

§ 1.791 Reports and requests to be filed under part 32 of this chapter.

Reports and requests shall be filed either periodically, upon the happening of specified events, or for specific approval by telephone companies in accordance with and subject to the provisions of part 32 of this chapter.

■ 3. Section 1.1409 is amended by adding paragraph (g) to read as follows:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(g) A price cap company opting-out of part 32 of this chapter may calculate attachment rates for its poles, conduits, and rights of way using either part 32 accounting data or GAAP accounting data. A price cap company using GAAP accounting data to compute rates to attach to its poles, conduits, and rights of way in any of the first twelve years after opting-out must adjust (increase or decrease) its annually computed GAAP-based rates by an Implementation Rate Difference for each of the remaining years in the period. The Implementation Rate Difference means the difference between attachment rates calculated by the price cap carrier under part 32 and under GAAP as of the last full year preceding the carrier's initial opting-out of part 32 USOA accounting requirements.

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

■ 4. The authority citation for part 32 is revised to read as follows:

Authority: 47 U.S.C. 219, 220 as amended, unless otherwise noted.

■ 5. Section 32.1 is revised to read as follow:

§ 32.1 Background.

The revised Uniform System of Accounts (USOA) is a historical financial accounting system which reports the results of operational and financial events in a manner which enables both management and regulators to assess these results within a specified accounting period. The USOA also provides the financial community and others with financial performance results. In order for an accounting system to fulfill these purposes, it must exhibit consistency and stability in financial reporting (including the results published for regulatory purposes). Accordingly, the

USOA has been designed to reflect stable, recurring financial data based to the extent regulatory considerations permit upon the consistency of the well established body of accounting theories and principles commonly referred to as generally accepted accounting principles (GAAP). Price cap companies that have opted-out of USOA requirements pursuant to the conditions specified by the Commission in § 32.11(g) are relieved of the rules of this part in their entirety, including any other rules or orders that are derivative of or dependent on the rules in this part.

§ 32.3 [Removed and Reserved]

■ 6. Section 32.3 is removed and reserved.

■ 7. Section 32.11 is amended by revising the section heading and paragraph (a), removing and reserving paragraphs (b) though (f), and adding paragraph (g) to read as follows:

§ 32.11 Companies subject to this part.

(a) This part applies to every incumbent local exchange carrier, as defined in section 251(h) of the Communications Act, and any other carrier that the Commission designates by order. This part refers to such carriers as "companies" or "Class B companies." Incumbent local exchange carriers' successor or assign companies, as defined in section 251(h)(1)(B)(ii) of the Communications Act, that are found to be non-dominant by the Commission, will not be subject to this Uniform System of Accounts.

* * * * *

(g) Notwithstanding paragraph (a) of this section, a price cap company that elects to calculate its pole attachment rates pursuant to § 1.1409(g) of this chapter will not be subject to this Uniform System of Accounts.

■ 8. Section 32.26 is revised to read as follows:

§ 32.26 Materiality.

(a) Except as provided in paragraph (b) of this section, companies may abide by the materiality standards of GAAP when implementing this system of accounts.

(b) For companies that receive High-Cost Loop Support, or Connect America Fund Broadband Loop Support, materiality shall be determined consistent with the general materiality guidelines promulgated by the Auditing Standards Board.

■ 9. Section 32.101 is amended by revising paragraph (c) to read as follows:

§ 32.101 Structure of the balance sheet accounts.

* * * * *

(c) Account 3100, Accumulated depreciation through Account 3400, Accumulated amortization—tangible, shall include the asset reserves except that reserves related to certain asset accounts will be included in the asset account. (See §§ 32.2005, 32.2682 and 32.2690.)

* * * * *

■ 10. Section 32.103 is revised to read as follows:

§ 32.103 Balance sheet accounts for other than regulated-fixed assets to be maintained.

Balance sheet accounts to be maintained by companies for other than regulated-fixed assets are indicated as follows:

BALANCE SHEET ACCOUNTS

Table with 2 columns: Account title, and numerical values. Rows include Current assets (Cash and equivalents, Receivables, Allowance for doubtful accounts, Supplies, Material and supplies, Prepayments, Other current assets), Noncurrent assets (Investments: Nonregulated investments, Other noncurrent assets), Deferred charges (Deferred maintenance, retirements and other deferred charges), and Other (Other jurisdictional assets-net).

■ 11. Section 32.2000 is amended by: ■ a. Removing and reserving paragraph (a)(4); ■ b. Revising paragraphs (b)(1), (b)(2)(iii), and (c)(2)(x); ■ c. Adding paragraph (e)(8); and ■ d. Revising paragraphs (f)(2)(iii) and (j).

The revisions and addition read as follows:

§ 32.2000 Instructions for telecommunications plant accounts.

(a) * * *

(4) [Reserved]

(b) * * *

(1) Property, plant and equipment acquired from an entity, whether or not affiliated with the accounting company, shall be accounted for at original cost, except that property, plant and equipment acquired from a nonaffiliated entity through an acquisition or merger may be accounted for at market value at the time of the acquisition or merger.

(2) * * *

(iii) Accumulated Depreciation and amortization balances related to plant

acquired shall be credited to Account 3100, Accumulated depreciation, or Account 3200, Accumulated depreciation—held for future telecommunications use, or Account 3400, Accumulated amortization—tangible and debited to Account 1438. Accumulated amortization balances related to plant acquired which ultimately is recorded in Accounts 2005, Telecommunications plant adjustment, Account 2682, Leasehold improvements, or Account 2690, Intangibles shall be credited to these asset accounts, and debited to Account 1438.

* * * * *

(c) * * *

(2) * * *

(x) Allowance for funds used during construction (“AFUDC”) provides for the cost of financing the construction of telecommunications plant. AFUDC shall be charged to Account 2003, Telecommunications plant under construction, and credited to Account 7300, Nonoperating income and expense. The rate for calculating AFUDC shall be determined in accordance with GAAP when implementing this system of accounts. The amount of interest cost capitalized in an accounting period shall not exceed the total amount of interest cost incurred by the company in that period.

* * * * *

(e) * * *

(8) Notwithstanding any other provision of this part concerning continuing property records, carriers subject to price cap regulations set forth in part 61 of this chapter shall maintain property records necessary to track substantial assets and investments in an accurate, auditable manner that enables them to verify their accounting books, make such property information available to the Commission upon request, and ensure the maintenance of such data.

(f) * * *

(2) * * *

(iii) The continuing property record shall reveal the description, location, date of placement, the essential details of construction, and the original cost (note also paragraph (f)(3) of this section) of the property record units. The continuing property records shall be compiled on the basis of original cost (or other book cost consistent with this system of accounts) and maintained in such manner as will provide for the verification of property record units by physical examination. The continuing property record and other underlying records of construction costs shall be so maintained that, upon retirement of one

or more retirement units or of minor items without replacement when not included in the costs of retirement units, the actual cost or a reasonably accurate estimate of the cost of the plant retired can be determined.

* * * * *

(j) Plant accounts to be maintained by telephone companies as indicated:

Account title	
Regulated plant	
Property, plant and equipment:	
Telecommunications plant in service.	1 2001
Property held for future telecommunications use.	2002
Telecommunications plant under construction—short term.	2003
Telecommunications plant adjustment.	2005
Nonoperating plant	2006
Goodwill	2007
Telecommunications plant in service (TPIS)	
TPIS—General support assets:	
Land and support assets	2110
TPIS—Central Office assets:	
Central Office—switching	2210
Operator systems	2220
Central Office—transmission	2230
TPIS—Information origination/termination assets:	
Information origination termination.	2310
TPIS—Cable and wire facilities assets:	
Cable and wire facilities	2410
TPIS—Amortizable assets:	
Amortizable tangible assets	2680
Intangibles	2690

¹ Balance sheet summary account only.

■ 12. Section 32.2110 is revised to read as follows:

§ 32.2110 Land and support assets.

This account shall be used by companies to record the original cost of land and support assets of the type and character detailed in Accounts 2111 through 2124.

■ 13. Section 32.2210 is revised to read as follows:

§ 32.2210 Central office—switching.

This account shall be used by companies to record the original cost of switching assets of the type and character detailed in Accounts 2211 through 2212.

■ 14. Section 32.2230 is revised to read as follows:

§ 32.2230 Central office—transmission.

This account shall be used by companies to record the original cost of radio systems and circuit equipment of the type and character detailed in Accounts 2231 and 2232.

■ 15. Section 32.2310 is revised to read as follows:

§ 32.2310 Information origination/termination.

This account shall be used by companies to record the original cost of information origination/termination equipment of the type and character detailed in Accounts 2311 through 2362.

■ 16. Section 32.2410 is revised to read as follows:

§ 32.2410 Cable and wire facilities.

This account shall be used by companies to record the original cost of cable and wire facilities of the type and character detailed in Accounts 2411 through 2441.

■ 17. Section 32.2680 is revised to read as follows:

§ 32.2680 Amortizable tangible assets.

This account shall be used by companies to record amounts for property acquired under capital leases and the original cost of leasehold improvements of the type of character detailed in Accounts 2681 and 2682.

§ 32.2682 [Amended]

■ 18. Section 32.2682 is amended by removing the last sentence in paragraph (c).

§ 32.2690 [Amended]

■ 19. Section 32.2690 is amended by removing and reserving paragraph (b).
 ■ 20. Section 32.3000 is revised to read as follows:

§ 32.3000 Instructions for balance sheet accounts—depreciation and amortization.

(a) *Depreciation and amortization subsidiary records.* (1) Subsidiary record categories shall be maintained for each class of depreciable telecommunications plant in Account 3100 for which there is a prescribed depreciation rate. (See also § 32.2000(g)(1)(iii).)

(2) Subsidiary records shall be maintained for Accounts 2005, 2682, 2690, 3400 in accordance with § 32.2000(h)(4).

(b) *Depreciation and amortization accounts to be maintained by telephone companies, as indicated.*

Account title	
Depreciation and amortization:	
Accumulated depreciation	3100
Accumulated depreciation—Held for future telecommunications use.	3200
Accumulated depreciation—Nonoperating.	3300
Accumulated depreciation—Tangible.	3400

■ 21. Section 32.3400 is amended by revising paragraph (a) introductory text to read as follows:

§ 32.3400 Accumulated amortization—tangible.

(a) This account shall include:

* * * * *

■ 22. Section 32.3999 is revised to read as follows:

§ 32.3999 Instructions for balance sheet accounts—liabilities and stockholders' equity.

LIABILITIES AND STOCKHOLDERS' EQUITY ACCOUNTS TO BE MAINTAINED BY COMPANIES

Account title	
Current liabilities:	
Current accounts and notes payable.	4000
Customer's Deposits	4040
Income taxes—accrued	4070
Other taxes—accrued	4080
Net Current Deferred Nonoperating Income Taxes.	4100
Net Current Deferred Nonoperating Income Taxes.	4110
Other current liabilities	4130
Long-term debt:	
Long Term debt and Funded debt.	4200
Other liabilities and deferred credits:	
Other liabilities and deferred credits.	4300
Unamortized operating investment tax credits—net.	4320
Unamortized nonoperating investment tax credits—net.	4330
Net noncurrent deferred operating income taxes.	4340
Net deferred tax liability adjustments.	4341
Net noncurrent deferred nonoperating income taxes.	4350
Deferred tax regulatory adjustments—net.	4361
Other jurisdictional liabilities and deferred credits—net.	4370
Stockholder's equity:	
Capital stock	4510
Additional paid-in capital	4520
Treasury stock	4530
Other capital	4540
Retained earnings	4550

■ 23. Section 32.4999 is amended by revising paragraphs (f) and (n) to read as follows:

§ 32.4999 General.

* * * * *

(f) *Subsidiary records—jurisdictional subdivisions and interconnection.* Subsidiary record categories shall be maintained in order that the company may separately report revenues derived from charges imposed under intrastate, interstate and international tariff filings.

Such subsidiary record categories shall be reported as required by part 43 of this chapter.

* * * * *

(n) *Revenue accounts to be maintained.*

Account title	
Local network services revenues:	
Basic local service revenue.	
Network access service revenues:	
End user revenue	5081
Switched access revenue	5082
Special access revenue	5083
Long distance network services revenues:	
Long distance message revenue	5100
Miscellaneous revenues:	
Miscellaneous revenue	5200
Nonregulated revenues:	
Nonregulated operating revenue	5280
Uncollectible revenues:	
Uncollectible revenue	5300

■ 24. Section 32.5000 is revised to read as follows:

§ 32.5000 Basic local service revenue.

Companies shall use this account for revenues of the type and character detailed in Accounts 5001 through 5060.

■ 25. Section 32.5200 is amended by revising the introductory text to read as follows:

§ 32.5200 Miscellaneous revenue.

This account shall include revenue derived from the following sources, as well as revenue of the type and character detailed in Account 5230, Directory revenue.

* * * * *

■ 26. Section 32.5999 is amended by revising paragraph (g) to read as follows:

§ 32.5999 General.

* * * * *

(g) *Expense accounts to be maintained.*

Account title	
Income Statement Accounts	
Plant specific operations expense:	
Network support expense	6110
General support expenses	6120
Central office switching expense	6210
Operators system expense	6220
Central office transmission expenses.	6230
Information origination/termination expense.	6310
Cable and wire facilities expenses.	6410
Plant nonspecific operations expense:	
Other property plant and equipment expenses.	6510
Network operations expenses	6530
Access expense	6540

Account title	
Depreciation and amortization expenses.	6560
Customer operations expense:	
Marketing	6610
Services	6620
Corporate operations expense:	
General and administrative	6720
Provision for uncollectible notes receivable.	6790

■ 27. Section 32.6110 is revised to read as follows:

§ 32.6110 Network support expenses.

(a) Companies shall use this account for expenses of the type and character detailed in Accounts 6112 through 6114.

(b) Credits shall be made to this account by companies for amounts transferred to Construction and/or other Plant Specific Operations Expense accounts. These amounts shall be computed on the basis of direct labor hours.

■ 28. Section 32.6120 is revised to read as follows:

§ 32.6120 General support expenses.

Companies shall use this account for expenses of the type and character detailed in Accounts 6121 through 6124.

■ 29. Section 32.6230 is amended to read:

§ 32.6230 Central office transmission expense.

Companies shall use this account for expenses of the type and character detailed in Accounts 6231 and 6232.

■ 30. Section 32.6310 is revised to read as follows:

§ 32.6310 Information origination/termination expenses.

Companies shall use this account for expenses of the type and character detailed in Accounts 6311 through 6362.

■ 31. Section 32.6410 is revised to read as follows:

§ 32.6410 Cable and wire facilities expenses.

Companies shall use this account for expenses of the type and character detailed in Accounts 6411 through 6441.

■ 32. Section 32.6510 is revised to read as follows:

§ 32.6510 Other property, plant and equipment expenses.

Companies shall use this account for expenses of the type and character detailed in Accounts 6511 and 6512.

■ 33. Section 32.6530 is revised to read as follows:

§ 32.6530 Network operations expense.

Companies shall use this account for expenses of the type and character detailed in Accounts 6531 through 6535.

■ 34. Section 32.6560 is revised to read as follows:

§ 32.6560 Depreciation and amortization expenses.

Companies shall use this account for expenses of the type and character detailed in Accounts 6561 through 6565.

■ 35. Section 32.6610 is revised to read as follows:

§ 32.6610 Marketing.

Companies shall use this account for expenses of the type and character detailed in Accounts 6611 through 6613.

■ 36. Section 32.6620 is revised to read as follows:

§ 32.6620 Services.

Companies shall use this account for expenses of the type and character detailed in Accounts 6621 through 6623.

■ 37. Section 32.6999 is revised to read as follows:

§ 32.6999 General.

(a) *Structure of the other income accounts.* The other income accounts are designed to reflect both operating and nonoperating income items including taxes, extraordinary items and other income and expense items not properly included elsewhere.

(b) *Other income accounts listing.*

Account title	
Operating taxes:	
Operating taxes	7200
Nonoperating income and expense:	
Nonoperating income and expense.	7300
Nonoperating taxes:	
Nonoperating taxes	7400
Interest and related items:	
Interest and related items	7500
Extraordinary items	7600
Jurisdictional differences and non-regulated income items:	
Income effect of jurisdictional ratemaking difference—net.	7910
Nonregulated net income	7990

■ 38. Section 32.7200 is revised to read as follows:

§ 32.7200 Operating taxes.

Companies shall use this account for operating taxes of the type and character detailed in Accounts 7210 through 7250.

■ 39. Section 32.9000 is amended by revising the definition of “Original cost” to read as follows:

§ 32.9000 Glossary of terms.

* * * * *

Original cost or cost, as applied to telecommunications plant, rights of way and other intangible property, means the actual money cost of (or the current money value of any consideration other than money exchanged for) property at the time when it was purchased.

* * * * *

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION, PROCEDURES, AND METHODOLOGIES

■ 40. The authority citation for part 65 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 41. The heading for part 65 is revised to read as set forth above.

■ 42. Section 65.810 is revised to read as follows:

§ 65.810 Definitions.

As used in this subpart “account xxxx” means the account of that number kept in accordance with the Uniform System of Accounts for Telecommunications Companies in 47 CFR part 32.

■ 43. Section 65.820 is amended by revising paragraph (d) to read as follows:

§ 65.820 Included items.

* * * * *

(d) *Cash working capital.* The average amount of investor-supplied capital needed to provide funds for a carrier’s day-to-day interstate operations. Carriers may calculate a cash working capital allowance either by performing a lead-lag study of interstate revenue and expense items or by using the formula set forth in paragraph (e) of this section. Carriers, in lieu of performing a lead-lag study or using the formula in paragraph (e) of this section, may calculate the cash working capital allowance using a standard allowance which will be established annually by the Chief, Wireline Competition Bureau. When either the lead-lag study or formula method is used to calculate cash working capital, the amount calculated under the study or formula may be increased by minimum bank balances and working cash advances to determine the cash working capital allowance. Once a carrier has selected a method of determining its cash working capital allowance, it shall not change to an optional method from one year to the next without Commission approval.

* * * * *

[FR Doc. 2017–07175 Filed 5–3–17; 8:45 am]

BILLING CODE 6712–01–P

Account title	
Other operating income and expense:	
Other operating income and expense.	7100

Proposed Rules

Federal Register

Vol. 82, No. 85

Thursday, May 4, 2017

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2017-0002]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/U.S. Immigration and Customs Enforcement-016 FALCON Search and Analysis System of Records

AGENCY: Privacy Office, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the “Department of Homeland Security/U.S. Immigration and Customs Enforcement-016 FALCON Search and Analysis System of Records” and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before June 5, 2017.

ADDRESSES: You may submit comments, identified by docket number DHS-2017-0002 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-343-4010.

- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Amber Smith, Privacy Officer, (202-732-3300), U.S. Immigration and Customs Enforcement, 500 12th Street SW., Mail Stop 5004, Washington, DC 20536, email: ICEPrivacy@dhs.gov, or Jonathan R. Cantor (202-343-1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the “DHS/U.S. Immigration and Customs Enforcement (ICE)-016 FALCON Search and Analysis System of Records” and this proposed rule. In this rule, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

I. Background

The Department of Homeland Security (DHS) is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the “DHS/U.S. Immigration and Customs Enforcement (ICE)-016 FALCON Search and Analysis System of Records” and this proposed rule. In this rule, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

The FALCON Search and Analysis (FALCON-SA) System of Records describes the operation of an ICE information technology system of the same name, which is owned by ICE’s Office of Homeland Security Investigations (HSI). This system contains a repository of data that is ingested on a routine or *ad hoc* basis from other existing sources, and an index created from that data. FALCON-SA incorporates tools that allow the data to be queried, analyzed, and presented in a variety of formats that can help illuminate relationships among the various data elements. The purpose of FALCON-SA is to help ICE HSI personnel conduct research and analysis using advanced analytic tools in support of their law enforcement mission.

FALCON Overview

In 2012, ICE HSI created a new IT environment called “FALCON” to support ICE’s law enforcement and criminal investigative missions. The FALCON environment is designed to permit ICE law enforcement and homeland security personnel to search

and analyze data ingested from other Government applications and systems while employing appropriate user access restrictions at the data element level and robust user auditing controls.

In February 2012, ICE deployed the first module of FALCON with the launch of FALCON-SA. FALCON-SA enables ICE law enforcement and homeland security personnel to search, analyze, and visualize volumes of existing information in support of ICE’s mission to enforce and investigate violations of U.S. criminal, civil, and administrative laws. ICE agents, criminal research specialists, and intelligence analysts use FALCON-SA to conduct research that supports the production of law enforcement intelligence products; provides lead information for investigative inquiry and follow-up; assists in the conduct of ICE criminal, civil, and administrative investigations; assists in the disruption of terrorist or other criminal activity; and discovers previously unknown connections among existing ICE investigations. ICE’s use of the system is always predicated on homeland security, law enforcement, and/or intelligence activities. FALCON-SA is an internal system used only by ICE.

Since the launch of FALCON-SA, ICE has created other user interfaces, including FALCON-Tip Line, FALCON-DARTTS, and FALCON-Roadrunner, under the FALCON umbrella. Like FALCON-SA, these other interfaces also use data maintained in the FALCON general data storage environment. This environment is where FALCON data is aggregated and user access is controlled through a combination of data tagging, access control lists, and other technologies. Using a central data store for FALCON data eliminates the need for multiple copies of the data and streamlines the application of many security and privacy controls. Only data accessed via FALCON-SA is covered by the DHS/ICE-016 FALCON-SA System of Records Notice (SORN). However, the other interfaces are covered by other ICE SORNs, as specified in the System Location section of the SORN. Separate SORNs are appropriate because the data, purposes, and routine uses differ for each FALCON interface.

FALCON-SA Data

Information included in FALCON-SA is ingested either on a routine or *ad hoc*

basis. Routine ingests are regular updates to datasets that originate from other Government (typically ICE or DHS) data systems. A list of routine ingests into the FALCON general data storage environment that are accessible via FALCON-SA is available in the FALCON-SA Privacy Impact Assessment at www.dhs.gov/privacy.

Ad hoc ingests are user-driven ingests of particular data that may be relevant to a given user or group's investigative or analytical project in FALCON-SA. The nature of the data in *ad hoc* ingests varies from data collected from a commercial or public source (e.g., Internet research or from a commercial data service such as CLEAR), to public reports of law enforcement violations or suspicious activity (tips), to digital records seized or subpoenaed during an investigation. All *ad hoc* ingests are tagged by the FALCON-SA user with the appropriate category description, and that tag drives the retention policy for that data. The *ad hoc* ingest category description list is included in the FALCON-SA Privacy Impact Assessment at www.dhs.gov/privacy.

FALCON-SA records may include some or all of the following types of personally identifiable information: Identifying and biographical data such as name and date of birth, citizenship and immigration data, border crossing data, customs import-export history, criminal history, contact information, criminal associates, family relationships, photographs and other media, and employment and education information.

FALCON-SA also contains an index, which is a numerical and alphabetical list of every word or string of numbers/characters found in the FALCON-SA database, with a reference to the electronic location where the corresponding source record is stored. FALCON-SA uses this index to conduct searches, identify relationships and links between records and data, and generate visualizations for analytic purposes. FALCON-SA also contains metadata that is created when ingesting data. The metadata is used to apply access controls and other system rules (such as retention policies) to the contents of FALCON-SA. The metadata also provides important contextual information about the date the information was added to FALCON-SA and the source system from where the data originated.

The data sets in FALCON-SA include tips submitted to ICE either through an online form on the ICE Web site or by calling the HSI Tip Line. These tips are generally created electronically using the FALCON-Tip Line interface.

Alternatively, they may be manually entered by HSI's Cyber Crimes Center when the tips pertain to child exploitation crimes. Once HSI adjudicates the tips for action, they are then accessible to all HSI users via the FALCON-SA interface.

Uses of FALCON-SA

ICE HSI agents, criminal research specialists, and intelligence analysts query FALCON-SA for a variety of purposes: To conduct research that supports the production of law enforcement intelligence products; to provide lead information for investigative inquiry and follow-up; to assist in the conduct of ICE criminal, civil, and administrative investigations; to assist in the disruption of terrorist or other criminal activity; and to discover previously unknown connections among existing ICE investigations. These queries can be saved in FALCON-SA to eliminate the need to recreate them each time a user logs on.

Strong access controls and a robust audit function ensure that ICE's use of the system is predicated on homeland security, law enforcement, and intelligence activities. This requirement is enforced by a governance group composed of leadership from HSI with oversight by ICE's legal, privacy, and civil liberties offices.

While ICE previously relied on the DHS/ICE-006 ICE Intelligence Records System (IIRS) SORN, last published at 75 FR 9233 (Mar. 1, 2010), to maintain FALCON-SA records, ICE recently determined a separate system of records notice will provide greater transparency and allow ICE to more accurately describe the records accessible via FALCON-SA. FALCON-Tip Line records were previously covered by the DHS/ICE-007 Alien Criminal Response Information Management (ACRIME) SORN, but the FALCON-SA SORN will now cover those records instead. This change is due to Tip Line records having migrated out of the ACRIME system into the FALCON environment and that once created, the official repository for FALCON-Tip Line records is the FALCON general data storage environment.

This SORN will cover data that is accessible via FALCON-SA's user interface only, and does not cover data that is accessed via other FALCON interfaces, such as Roadrunner and DARTTS, which are covered by the DHS/ICE-005 Trade Transparency and Analysis Records (TTAR) SORN.

Additional information about FALCON-SA can be found in the Privacy Impact Assessments published for FALCON-SA and FALCON-Tip

Line, available at <http://www.dhs.gov/privacy-documents-ice>.

Consistent with DHS's information sharing mission, information stored in the FALCON-SA SORN may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate Federal, State, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in the system of records notice.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency 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. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, and similarly, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/ICE-016 FALCON-SA System of Records. Some information this system of records relates to official DHS national security, law enforcement, immigration, and intelligence activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety

of confidential informants and law enforcement personnel; to ensure DHS retains the ability to obtain information from third parties and other sources; and to protect the privacy of third parties. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, when compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A system of records notice for DHS/ICE-016 FALCON-SA System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 301; 6 U.S.C. 101 *et seq.*; E.O. 13392.

■ 2. Add new paragraph 77 at the end of appendix C to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

77. The DHS/ICE-016 FALCON Search and Analysis (FALCON-SA) System of Records consists of electronic and paper records and will be used by ICE law enforcement and homeland security personnel. The DHS/ICE-016 FALCON-SA System of Records contains aggregated data from ICE and DHS law enforcement and homeland security IT systems, as well as data uploaded by ICE personnel for analysis from various public, private, and commercial sources during the course of an investigation or analytical project. This information may include some or all of the following types of personally identifiable information: Identifying and biographic data such as name and date of birth; citizenship and immigration data; border crossing data; customs import-export history; criminal history; contact information; criminal associates; family relationships; photographs and other media; and employment and education information. The records also include tips received by ICE from the public concerning suspicious or potentially illegal activity, as well as telephone call detail records, which contain call transactions and subscriber data, obtained via lawful process during the course of an investigation. This information is maintained by ICE for analytical and

investigative purposes and is made accessible to ICE personnel via the FALCON-SA system interface. The system is used to conduct research that supports the production of law enforcement intelligence products; provide lead information for investigative inquiry and follow-up; assist in the conduct of ICE criminal and administrative investigations; assist in the disruption of terrorist or other criminal activity; and discover previously unknown connections among existing ICE investigations.

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); (f); and (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); and (g). When a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2) or (k)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or administrative violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or administrative violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose classified and other security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement and/or threaten individuals' safety by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: May 1, 2017.

Jonathan R. Cantor,
Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2017-09026 Filed 5-3-17; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 170, 177, and 189

[Docket No. FDA-2015-F-0537]

Natural Resources Defense Council et al.; Denial of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; denial of petition.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is denying a petition, submitted by the Natural Resources Defense Council, Center for Food Safety, Clean Water Action, Children's Environmental Health Network, Center for Science in the Public Interest, Breast Cancer Fund, Center for Environmental Health, Environmental Working Group, and Improving Kids' Environment, requesting that we revoke the Threshold of Regulation (TOR) exemption No. 2005-006 to no longer exempt from our food additive regulations the use of sodium perchlorate monohydrate as a conductivity enhancer in antistatic agents for use in finished articles in contact with dry foods; issue a new FDA regulation to prohibit the use of perchlorates in antistatic agents for use in food-contact articles; and amend our food additive regulations to no longer provide for the use of potassium perchlorate as an additive in closure-sealing gaskets for food containers.

DATES: This notification is effective May 4, 2017; except as to any provisions that may be stayed by the filing of proper objections. See Section VI of this document for information on the filing of objections. Submit either electronic or written objections and requests for a hearing by June 5, 2017. Late, untimely filed objections will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of June 5, 2017. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

ADDRESSES: You may submit either electronic or written objections and requests for a hearing identified by Docket No. FDA-2015-F-0537, by any of the following methods:

Electronic Submissions

Submit electronic objections in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection 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 objection, 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 objection 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 objections submitted to the Division of Dockets Management, FDA will post your objection, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2015-F-0537 for "Natural Resources Defense Council et al.; Denial of Food Additive Petition." Received objections, those filed in a timely manner (see **DATES**), will be placed in the docket, and except for those submitted as "Confidential Submissions," publically 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 an objection with confidential information that you do not wish to be made publicly available, submit your objections 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: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or objections 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.

FOR FURTHER INFORMATION CONTACT: Hui-Chen (Anita) Chang, Center for Food Safety and Applied Nutrition (HFS-275), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740-3835, 240-402-1161.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a document published in the **Federal Register** of March 16, 2015 (80 FR 13508), we announced that we filed a food additive petition (FAP 4B4808) ("petition") submitted by the Natural Resources Defense Council, 1152 15th St. NW., Suite 300, Washington, DC 20005; the Center for Food Safety, 303 Sacramento St., Second Floor, San Francisco, CA 94111; Clean Water Action, 144 I St. NW., Suite 400, Washington, DC 20005; the Center for Science in the Public Interest, 1220 L St. NW., Suite 300, Washington, DC 20005; Children's Environmental Health Network, 110 Maryland Ave. NE., Suite 402, Washington, DC 20002; the Breast Cancer Fund, 1388 Sutter St., Suite 400, San Francisco, CA 94109-5400; the Center for Environmental Health, 2201 Broadway, Suite 302, Oakland, CA 94612; Environmental Working Group, 1436 U St. NW., Suite 100, Washington,

DC 20009; and Improving Kids' Environment, 1915 West 18th St., Indianapolis, IN 46202 (collectively, "petitioners"). In the March 2015 document, we requested comments on the petition under § 189.1(c) (21 CFR 189.1(c)). The petition included submissions dated July 31, 2014, October 15, 2014, and December 5, 2014. The October 15, 2014, submission included a resubmission of the entire July 31, 2014, original petition with the inclusion of some additional information. The December 5, 2014, submission contained additional information to that provided in the October 15, 2014, submission. Any references to specific parts of the petition are to the October 15, 2014, submission while specific references to the December 5, 2014, submission will refer to the date of that document.

The petition asked FDA to take three separate regulatory actions: (1) Revoke its 2005 approval of TOR exemption No. 2005-006 allowing as much as 1.2 percent sodium perchlorate monohydrate in dry food packaging; (2) issue a new § 189.301 (21 CFR 189.301) prohibiting the use of perchlorate as a conductivity enhancer in the manufacture of antistatic agents to be used in food contact articles; and (3) remove potassium perchlorate as an allowed additive in sealing gaskets for food containers in existing § 177.1210 (21 CFR 177.1210). For accuracy, we will refer to the petition's second request as a request to issue a new regulation under part 189 because a regulation already exists at § 189.301. The petition asserted that the allowed food-contact uses of perchlorate are not safe because there is no longer a reasonable certainty that the perchlorate is not harmful under the intended conditions of use considering: (1) The probable consumption of perchlorate; (2) the cumulative effect of perchlorate after taking into account pharmacologically-related substances, such as thiocyanate and nitrate, in the diet; and (3) additional safety factors necessary to protect the developing brain of fetuses and infants from irreversible harm. The petition also asserted that new exposure data are available that support the requested revocation of TOR exemption No. 2005-006.

Both food contact substances that are the subject of the petition—sodium perchlorate monohydrate and potassium perchlorate—belong to a class of chemicals termed "perchlorates." Perchlorates are both naturally-occurring and man-made chemicals with a wide variety of industrial and some medical applications. Perchlorates

are ionic salts that contain the perchlorate anion (chemical structure ClO_4^-). In this notification, the term "perchlorates" refers to the class of chemicals while the term "perchlorate" refers to the perchlorate ion.

II. Background

A. Statutory and Regulatory Background

The petition asked FDA to take actions related to three different types of FDA regulations.

1. Food Additive Regulation

The Federal Food, Drug, and Cosmetic Act (the FD&C Act) authorizes us to regulate "food additives" (see section 409(a) of the FD&C Act (21 U.S.C. 348(a)). The FD&C Act defines "food additive," in relevant part, as any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of food (see section 201(s) of the FD&C Act (21 U.S.C. 321(s))). Food additives can include both substances added directly to food and "food contact substance[s]" (*i.e.*, substances intended for use in materials that come into contact with food, for instance in food packaging or manufacturing, but which are not intended to have any technical effect in the food (see § 170.3(e)(3) (21 CFR 170.3(e)(3))). Food additives are deemed unsafe and prohibited except to the extent that we approve their use (see, *e.g.*, section 301(a) and (k) (21 U.S.C. 331(a) and (k)) and 409(a) of the FD&C Act).

The FD&C Act provides a process through which persons who wish to use a food additive may submit a petition proposing the issuance of a regulation prescribing the conditions under which the additive may be safely used (see section 409(b)(1) of the FD&C Act). Such a petition is referred to as a "food additive petition." When we conclude that a proposed use of a food additive is safe, we issue a regulation called a "food additive regulation" authorizing a specific use of the substance.

The specific food additive regulation at issue in the petition, § 177.1210, lists substances allowed as indirect additives (also called food contact substances) in closures with sealing gaskets for food containers. Potassium perchlorate is one of the listed substances authorized for this use under § 177.1210.

The FD&C Act provides that we must by regulation prescribe the procedure by which a food additive regulation may be amended or repealed (see section 409(i) of the FD&C Act). Our regulation specific to the administrative actions for food additives provides that the

Commissioner of Food and Drugs (the Commissioner), on his own initiative or on the petition of any interested person, may propose the issuance of a regulation amending or repealing a regulation pertaining to a food additive (see § 171.130(a) (21 CFR 171.130(a))). Our regulation, at § 171.130(b), further provides that any such petition must include an assertion of facts, supported by data, showing that new information exists with respect to the food additive or that new uses have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the existing regulation or exemption may justify its amendment or repeal.

FDA has issued administrative regulations for food additive petitions in part 171. These regulations apply to food additive petitions requesting either that we authorize the new use of a food additive or that we amend or repeal an existing food additive regulation.

2. TOR Exemption

The food additive petition process generally applies to substances used in food packaging or processing when the proposed use will cause the substance to become part of the food at a level that exceeds a minimum "threshold of regulation" (see § 170.39 (21 CFR 170.39)). Our determination that a use of a substance is at or below the "threshold of regulation" is referred to as a "threshold of regulation" exemption, or a TOR exemption. Regardless of whether the use of a substance is at or below the threshold of regulation, we reserve the right to apply the food additive petition process in those cases in which available information establishes that the proposed food-contact use may pose a public health risk (see § 170.39(b)).

We established the procedures set forth in § 170.39 to exempt certain substances used in food-contact articles (*e.g.*, food-packaging (such as a cereal bag) or food-processing equipment) that migrate or may be expected to migrate into food at negligible levels from regulation as a food additive. Eligible substances must become a component of food at levels that are at or below the threshold of regulation, must not have been shown to cause cancer in humans or animals or be suspected carcinogens, and must meet other criteria in § 170.39. If we determine the criteria are met, we inform the requestor by letter that the intended use of a substance in food-contact articles is exempt from regulation as a food additive. Therefore, when we issue a TOR exemption, the intended use of the substance does not require a regulation authorizing its food

additive use under section 409 of the FD&C Act (also referred to as a “listing regulation”) or food additive petition (see §§ 170.3(e)(2) and 171.8). We issued TOR exemption No. 2005–006 in 2005. We maintain a list of TOR exemptions on our Web site (Ref. 1).

Our regulations provide that if we receive significant new information that raises questions about the dietary concentration or the safety of a substance that is the subject of a TOR exemption, we may reevaluate the substance (see § 170.39(g)). Our regulations, at § 170.39(g), state that if we tentatively conclude that the available information no longer supports an exemption for the use of the food-contact material from the food additive regulations, we will notify any persons that requested an exemption for the substance of our tentative decision and will provide them with an opportunity to show why the use of the substance should not be regulated under the food additive provisions of the FD&C Act. If the requestors fail to adequately respond to the new evidence, we notify them that further use of the substance in question for the particular use will require a food additive regulation (see § 170.39(g)). Thus, anyone who seeks to use such substance as a food additive would need to submit a food additive petition seeking such a regulation or obtain authorization through a food contact notification. We also notify other manufacturers, by means of a notice published in the **Federal Register**, of our decision to revoke a TOR exemption issued for a specific use of a substance in a food-contact article (see § 170.39(g)).

3. Regulation Under Part 189

Our regulations at § 189.1(a) provide that “food ingredients” may be prohibited from uses in human food based on a determination that the food ingredients present a potential risk to the public health or have not been shown by adequate scientific data to be safe for use in human food. Additionally, § 189.1(c) provides that the Commissioner, either on his own initiative or on the petition of any interested person, may publish a proposal to establish, amend, or repeal a regulation under this section on the basis of new scientific evaluation or information. We established part 189 to: (1) Provide, for reference purposes, a partial listing of substances prohibited from use in human food and (2) create an administrative process through which we can prohibit by rulemaking the use of substances in human foods because of a determination that they

present a potential risk to the public health or have not been shown by adequate scientific data to be safe for use in human foods (see 39 FR 34172, September 23, 1974).

B. Abandonment of Use of Potassium Perchlorate Authorized Under 21 CFR § 177.1210

In a document published in the **Federal Register** on June 30, 2016 (81 FR 42585), we announced that we filed a food additive petition (FAP 6B4816) (“abandonment petition”) that proposed that we amend § 177.1210 to no longer provide for the use of potassium perchlorate as an additive in closure-sealing gaskets for food containers because the use has been intentionally and permanently abandoned. Elsewhere in this issue of the **Federal Register**, we have published a final rule concluding that the use of potassium perchlorate authorized under § 177.1210 has been permanently and completely abandoned. The final rule amends § 177.1210 to no longer authorize the use of potassium perchlorate as an additive in closure-sealing gaskets for food containers.

Because the final rule issued in response to the abandonment petition removes potassium perchlorate as an allowed additive in sealing gaskets for food containers—thereby taking the third action requested in the petition—the petition’s third request is moot, and it is neither necessary nor an efficient use of our resources to address the petitioners’ assertions regarding the safety of the food additive use of potassium perchlorate that is no longer authorized. Where helpful for clarity, this notification will describe the petition’s arguments regarding the food additive use of potassium perchlorate in the course of reviewing the petition’s requests to revoke TOR exemption No. 2005–006 and to issue a new regulation under part 189.

C. The Scope of a Food Additive Petition

The petitioners designated their petition as a “food additive petition.” A food additive petition must either propose the issuance of a regulation prescribing the conditions under which a food additive may be safely used (see section 409(b)(1) of the FD&C Act), or propose the amendment or repeal of an existing food additive regulation (see section 409(i) of the FD&C Act).

Only one of the petition’s requested actions falls within the statutory scope of a food additive petition: Amending § 177.1210 to remove potassium perchlorate as an allowed additive in sealing gaskets for food containers, the

action we are taking in response to the abandonment petition. Because the petition’s other two requests—the revocation of TOR exemption No. 2005–006 and the issuance of a regulation under part 189 prohibiting the use of perchlorate in the manufacture of antistatic agents to be used in food-contact articles—are not directed at regulations issued under the food additive petition process, they are governed by different regulations and are not subject to the statutory processes for food additive petitions.

TOR substances, *i.e.*, substances used in food-contact articles that become a component of food at levels that are below the threshold of regulation and meet the criteria in § 170.39, are exempt from regulation as food additives and do not require a listing regulation or food additive petition (see §§ 170.3(e)(2) and 171.8). As noted in the filing notice for this petition, the procedures for reevaluating and revoking a TOR exemption are set forth in § 170.39(g). These procedures are distinct from the food additive petition process. A request to revoke a TOR exemption is the proper subject of a citizen petition submitted under 21 CFR 10.30.

The petition’s request that we issue a new regulation under part 189 also falls outside the scope of a food additive petition. A proposed part 189 regulation does not propose the issuance of a new food additive regulation or the amendment or repeal of an existing food additive regulation (see sections 409(b)(1) and (i) of the FD&C Act). Under part 189, an interested person can use the citizen petition process to request a regulation prohibiting a substance from human food (see § 189.1(c) (referring to 21 CFR part 10, which sets forth FDA’s citizen petition process)).

Although the requests to revoke the approval of TOR exemption No. 2005–006 and to issue a new regulation under part 189 are outside the scope of a food additive petition, for reasons of administrative efficiency, we initially considered these requests in conjunction with the petition’s request to amend § 177.1210 to remove potassium perchlorate as an allowed additive in sealing gaskets for food containers. Because the food additive use of potassium perchlorate has been removed from § 177.1210 in response to the abandonment petition, it is neither necessary nor an efficient use of resources to address the petition’s assertions regarding this use of perchlorate. Nonetheless, because we considered all of these requests together for purposes of administrative efficiency, we are addressing the

petition's requests to revoke the approval of TOR exemption No. 2005–006 and to issue a new regulation under part 189 in this document. However, although we are addressing these requests in connection with our denial of a food additive petition, we emphasize that these requests are not the proper subject of a food additive petition. Our denial of these two requests is a final Agency decision, but is not an order under section 409(c)(1)(B) of the FD&C Act.

D. Background on Perchlorate

Perchlorate can interfere with the normal functioning of the thyroid gland by competitively inhibiting the transport of iodide into the thyroid. Iodide is an important component of two thyroid hormones, T4 and T3, and the transfer of iodide from the blood into the thyroid is an essential step in the synthesis of these two hormones. Iodide transport into the thyroid is mediated by a protein molecule known as the sodium (Na⁺)-iodide (I[−]) symporter (NIS). NIS molecules bind iodide with high affinity, but they also bind other ions that have a similar shape and electric charge, such as perchlorate. The binding of these other ions to the NIS can inhibit iodide transport into the thyroid, which can result in intrathyroidal iodide deficiency and consequently decreased synthesis of T4 and T3 (73 FR 60262, 60266, October 10, 2008). In fetuses, infants, and young children, thyroid hormones are critical for normal growth and development. *Id.* at 60275. For example, sustained thyroid hormone decrement in a pregnant mother could lead to adverse neurodevelopmental effects in the fetus. *Id.* at 60266. Research in this area is ongoing.

As part of its discussion asserting that new information is available that raises question as to the safety of the allowed food-contact uses of perchlorates, the petition cited two reviews on perchlorate requested by the Environmental Protection Agency (EPA): A 2005 National Research Council (NRC) review (Ref. 2) and the 2013 report of the EPA's Scientific Advisory Board (SAB) (Ref. 3). The 2005 NRC report noted that thyroid iodide uptake inhibition (IUI) is the only effect that has been consistently documented in humans exposed to perchlorate. Therefore, as part of its review, the NRC utilized a hypothetical mode-of-action (MOA) framework, which represents a continuum of possible biological effects resulting from perchlorate exposure, to describe the potential pathway of events following perchlorate exposure. This MOA framework hypothesized that IUI

could induce thyroid hormone changes to an extent that could ultimately result in neurodevelopmental effects in fetuses and infants. The SAB utilized a similar MOA framework. In both MOA frameworks, IUI is the determinant, non-adverse precursor effect, which must occur prior to any later adverse effect.

1. 2005 NRC Review

The 2005 NRC report was prepared in response to a request from the EPA that the National Academy of Sciences review the science regarding potential adverse effects of disruption of thyroid function and provide recommendations to apply this information to a risk assessment for environmental contamination from perchlorate. The report recommended that EPA derive a reference dose (RfD) for perchlorate by applying a tenfold intraspecies uncertainty factor to a no observed effect level (NOEL) based on the initiation of IUI as determined in a human study (Ref. 4). (The RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily oral exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. The NOEL is an exposure level at which there are no statistically or biologically significant increases in frequency or severity of any effect between the exposed population and its appropriate control.) The NRC stated that this approach was conservative and protective of health given that the NOEL is based on the non-adverse effect of IUI, which precedes the continuum of possible adverse effects as a result of perchlorate exposure. According to the NRC, the application of the uncertainty factor accounts for differences in sensitivity between the healthy human subjects of the determinant clinical study and “even the most sensitive populations” for perchlorate exposure, which the NRC identified as fetuses of pregnant women who may have hypothyroidism or iodide deficiency. (Hypothyroidism is a condition where “the thyroid gland does not produce enough thyroid hormones to meet the body's needs” (Ref. 5)). EPA adopted the NRC's recommendations resulting in an RfD of 0.7 micrograms perchlorate/kilogram body weight/day (µg/kg bw/d) (Ref. 6).

2. 2013 EPA SAB Report

The 2013 SAB report was developed in response to a request by EPA for guidance on a suitable approach to utilize relevant available information to derive a maximum contaminant level

goal (MCLG) for perchlorate in drinking water. The Safe Drinking Water Act defines an MCLG as the level of a contaminant in drinking water “at which no known or anticipated adverse effects on the health of persons occur and which allows for an adequate margin of safety.” 42 U.S.C. 300g–1(b)(4). An MCLG is a nonenforceable public health goal. EPA generally derives an MCLG using the RfD and specific chemical exposure factors. (Ref. 7). Rather than this default approach, the SAB recommended that EPA expand existing physiologically-based pharmacokinetic/pharmacodynamics (PBPK/PD) models to relate perchlorate exposure, in combination with iodide intake, beyond IUI to downstream MOA framework effects, such as resultant thyroid hormone perturbations and potential adverse neurodevelopmental outcomes. The SAB also recommended that the sensitive populations for exposure to perchlorate that EPA should consider when determining an MCLG are the fetuses of hypothyroxinemic pregnant women (hypothyroxinemia means that the free thyroxine (fT4) value is at lower end of the normal range with normal levels of thyroid stimulating hormone (Ref. 8)) and infants exposed to perchlorate through either water-based formula preparations or the breast milk of lactating women.

III. Review of the Petition

The petition asserted that the original request for TOR exemption No. 2005–006 contained errors that should have made the request ineligible for a TOR exemption under § 170.39. The petition also asserted that we made additional errors in exempting the proposed use of sodium perchlorate monohydrate from regulation as a food additive. The petition also identified four categories of “significant new information that raises questions about the dietary concentration or the safety of a substance that [FDA] has exempted from regulation,” that it contends warrant reevaluation of TOR exemption No. 2005–006 under § 170.39(g). Lastly, the petition asserted that infants are likely to be disproportionately impacted by perchlorate, and that we have an obligation under Executive Order 13045 (see 62 FR 19885, April 23, 1997) to address risks to infants from perchlorate exposure. The petition also requested that FDA issue a new regulation under part 189 to prohibit the use of perchlorate as a conductivity enhancer in the manufacture of antistatic agents to be “applied to food contact articles.”

We will first address the petition's arguments regarding the review of TOR exemption No. 2005–006, then address

the petition's arguments based on "significant new information," then subsequently address the assertions pertaining to our obligation under Executive Order 13045, and finally, the request that we issue a new regulation under part 189.

A. Arguments Regarding Review of TOR Exemption No. 2005–006

The petition claimed that multiple errors were made in the original calculation of dietary exposure resulting from the use allowed by the TOR exemption No. 2005–006 and that assumptions used in that calculation were either improperly applied or have been shown to be flawed based on new information available after the TOR exemption became effective. The petition stated further that if these alleged errors were addressed, the dietary exposure resulting from the use allowed by the TOR exemption No. 2005–006 would exceed the TOR exemption criteria.

We describe the background for TOR exemption No. 2005–006 in section III.A.1. The issues raised in the petition concerning alleged errors in the original calculation and assumptions used in that calculation, as well as our responses to those issues, are discussed in sections III.A.2 through III.A.6.

1. Background for TOR Exemption No. 2005–006

Our regulations, at § 170.39(a)(2), provide the exposure criteria for a TOR exemption. As stated in § 170.39(a)(2)(i), the use of a substance will be exempted from regulation as a food additive if the use in question is shown to result in or may be expected to result in dietary concentrations at or below 0.5 parts per billion (ppb), corresponding to dietary exposure levels at or below 1.5 µg of substance/person/day (based on a diet of 1,500 grams (g) of solid food and 1,500 g of liquid food per person per day). As noted in section II.A.2, § 170.39(g) sets forth the procedures for reevaluating and revoking a TOR exemption.

We have issued guidance documents to help interested parties when preparing premarket submissions for food contact substances. Our guidance document specific to chemistry recommendations for food contact substances (Ref. 9) ("chemistry guidance") provides recommendations for: (1) Migration protocols to determine or estimate the concentration of a food contact substance in the specific food that contacts a given food-contact article containing the substance as a result of the intended use of that substance ("the migration of a substance") and (2) how

to use this information to calculate the resultant total dietary exposure to the substance as a result of its intended use. Our chemistry guidance provides general protocols for food-contact articles intended for single use, as well as general recommendations for articles intended for repeated use.

The chemistry guidance also provides recommended migration protocols for certain specific use applications, including articles intended for use only with non-fatty, dry foods (termed "Food Type VIII" in our chemistry guidance). Specific to non-fatty, dry foods, the recommended protocol includes an assumption that a food contact substance migrates into non-fatty, dry foods at a level of 50 µg substance per kilogram food, or 50 ppb. To determine total dietary exposure to a substance as a result of its intended use, the chemistry guidance recommends the application of a consumption factor to the concentration in food determined from the migration protocol. The consumption factor describes the fraction of the daily diet expected to contact a specific type of packaging material. Consumption factors are derived using information on the types of food consumed, the types of food contacting each packaging surface, the number of food packaging units in each food packaging category, the distribution of container sizes, and the ratio of the weight of food packaged to the weight of the package (Ref. 9).

The request for TOR exemption No. 2005–006 was submitted to FDA by Ciba Specialty Chemicals Corporation (Ciba) on June 17, 2005. Although Ciba calculated exposure for sodium perchlorate monohydrate, in this document we convert Ciba's exposure numbers to exposure to the perchlorate anion (the substance of toxicological concern is the perchlorate anion and EPA's RfD for perchlorate is expressed on a perchlorate anion basis). To determine the concentration of perchlorate anion (*i.e.*, "perchlorate") in food that contacts finished articles containing sodium perchlorate monohydrate as a result of TOR exemption No. 2005–006, Ciba applied the percentage of sodium perchlorate monohydrate in the finished food-contact article to the 50 ppb migration concentration assumption for non-fatty, dry foods listed in our chemistry guidance. This resulted in a sodium perchlorate monohydrate concentration in food of 0.6 ppb, which corresponds to a concentration of 0.4 ppb for perchlorate in food. To determine a total dietary concentration for perchlorate as a result of this specific use, Ciba then applied our consumption factor for

substances that may be used in all polymers but only for specific uses (0.05) to this concentration value. This resulted in a total dietary concentration for sodium perchlorate monohydrate of 0.03 ppb, or 0.02 ppb for perchlorate. For comparison against the TOR exemption exposure criteria stipulated in § 170.39(a)(2)(i), Ciba subsequently multiplied this total dietary concentration by FDA's assumption that an individual consumes 3 kg of food per day. This resulted in a dietary exposure of 0.09 µg sodium perchlorate monohydrate/person/day, or 0.063 µg perchlorate/person/day. A review that we conducted before TOR exemption 2005–006 became effective determined that the provided information demonstrated that the use would result in a dietary exposure below the 1.5 µg/person/day TOR exemption criteria (Ref. 10).

2. Issues Pertaining to Calculations Based on FDA's Chemistry Guidance

The petition asserted that Ciba deviated from the recommendations provided in FDA's chemistry guidance when calculating the exposure to perchlorate that results from the intended use for the TOR exemption No. 2005–006. Specifically, the petition asserted that applying the percentage of sodium perchlorate monohydrate in the finished food-contact article to the 50 ppb migration concentration assumption deviates from the recommended migration protocol for non-fatty, dry foods and improperly made Ciba's intended use for sodium perchlorate monohydrate eligible for a TOR exemption. Furthermore, the petition said that the original TOR exemption submission did not account for the recommendations presented in FDA's chemistry guidance for substances in food-contact articles intended for repeated-use.

a. Applying the percentage of sodium perchlorate in the finished food-contact article to the 50 ppb migration concentration assumption. The petition asserted that Ciba "varied" from our chemistry guidance when it "inserted the amount of perchlorate in the formulation (4%) and the amount of formulation in the packaging (30%) into" the equation for calculating the dietary concentration of sodium perchlorate monohydrate. Specifically, Ciba applied the percentage of sodium perchlorate monohydrate in the finished food-contact article ($4\% \times 30\% = 1.2\%$) to the 50 ppb migration concentration assumption.

We acknowledge that our chemistry guidance does not specifically discuss a procedure for applying the percentage of

a substance in the finished food-contact article to the 50 ppb migration concentration assumption for the food contact substance, but applying such a percentage to a migration concentration assumption does not deviate from that guidance. The migration protocol for Food Type VIII is written at a general level and does not preclude scientifically appropriate calculations based on the percentage of a food contact substance when using the 50 ppb migration concentration assumption. We believe it was scientifically appropriate for Ciba to apply the percentage of the food contact substance in the finished packaging to the 50 ppb migration concentration assumption. Ciba's calculation noted that sodium perchlorate monohydrate represents only a small fraction of the antistatic agent in which it is used (4 percent), and the antistatic agent itself represents only a fraction of the finished food-contact article in which it is used (30 percent). Therefore, absent contradictory data, it is scientifically reasonable to assume that sodium perchlorate monohydrate migrates to Food Type VIII at the level that it is present in the finished food-contact article (*i.e.*, 1.2 percent of the 50 ppb migration concentration assumption). Such percentages have been applied to migration concentration assumptions in other submissions that have been approved or become effective (Ref. 11).

We also note that the chemistry guidance states that dry foods with the surface containing no free fat or oil typically exhibit little or no migration, and cites volatile or low molecular weight adjuvants as examples of substances that would be expected to migrate into non-fatty, dry foods. Sodium perchlorate monohydrate is an ionic compound with low volatility and therefore would not be expected to migrate from food-contact materials into non-fatty, dry foods (Ref. 11). Therefore, there is no scientific basis to suggest that sodium perchlorate monohydrate would migrate into non-fatty, dry foods at a higher percentage of the 50 ppb migration concentration assumption than its percentage in the food-contact article.

The appropriateness of Ciba's approach of applying the percentage of sodium perchlorate monohydrate in the finished food-contact article to the 50 ppb migration concentration assumption is supported by available analytical data provided in comments to the docket for the petition. The migration protocol specific to non-fatty, dry foods provided in our chemistry guidance recommends either the estimation of the migration of a

substance using the 50 ppb migration concentration assumption or the determination of the actual migration via appropriate migration studies. Comments submitted to the docket for the petition include a migration study for sodium perchlorate monohydrate from a worst-case polymeric resin into a simulant for non-fatty, dry foods (see Docket Nos. FDA-2015-F-0537, Supplemental Comments from BASF Corporation (Keller and Heckman LLP) (FDA-2015-F-0537-18), BASF Corp Migration Report (Redacted) re: Supplemental Comments from BASF Corporation (Keller and Heckman LLP) (FDA-2015-F-0537-19), BASF Corporation Appendix A—Analysis Method (Redacted) re: Supplemental Comments from BASF Corporation (Keller and Heckman LLP) (FDA-2015-F-0537-20), BASF Corporation Appendix B—Detailed Sample Analysis Data (Redacted) re: Supplemental Comments from BASF Corporation (Keller and Heckman LLP) (FDA-2015-F-0537-21), BASF Corporation Appendix C—Chromatograms (Redacted) re: Supplemental Comments from BASF Corporation (Keller and Heckman LLP) (FDA-2015-F-0537-22), and BASF Corporation Appendix D—Spiking Validation at Low Perchlorate (Redacted) re: Supplemental Comments from BASF Corporation (Keller and Heckman LLP) (FDA-2015-F-0537-23)). We reviewed this study and determined that it is adequate to determine worst-case migration of perchlorate into non-fatty, dry foods as a result of the use specified in the TOR exemption No. 2005-006 (Ref. 11). As such, the migration concentration in food for perchlorate as determined from this migration study can be used to verify the appropriateness of Ciba's approach of applying the percentage of sodium perchlorate monohydrate in the finished food-contact article to the 50 ppb migration concentration assumption.

The migration study reported its results on a basis of grams of perchlorate per surface area of test sample. To convert this reporting basis to grams of perchlorate per gram of food, we applied our standard assumption for the food mass-to-surface area ratio for consumer packaging (10 g of food contacting each square inch of food-contact article) to the results of the migration study. This results in a migration concentration of 0.5 nanogram (ng) perchlorate/g food, or 0.5 ppb. This value is substantially less than the 50 ppb migration concentration assumption provided in our chemistry guidance and is essentially equivalent to

the 0.4 ppb concentration for perchlorate in food calculated using Ciba's approach in its TOR submission. The dietary exposure to perchlorate calculated using the concentration for perchlorate in food obtained from the migration study (0.075 µg/person/day) is also essentially equivalent to that calculated using Ciba's approach (0.063 µg/person/day) and is lower than the TOR exemption criteria of 1.5 µg/person/day. The results of the migration study confirm that Ciba's approach to calculating migration was scientifically appropriate. Both the migration study and Ciba's approach resulted in dietary exposure figures for sodium perchlorate monohydrate that were lower than the TOR exemption criteria. Therefore, the petition's assertion that the intended use of sodium perchlorate monohydrate would not be eligible for a threshold of regulation exemption if migration had been properly calculated is unfounded.

b. *Calculation of dietary exposure based on migration protocol.* As discussed in section III.A.1, FDA's chemistry guidance discusses general protocols for food-contact articles intended for single-use (*e.g.*, a disposable paper cup), as well as for articles intended for repeated-use (*e.g.*, a reusable ceramic mug). Part I.C.5 of the petition noted that Ciba's calculation of dietary exposure "did not rely" on the recommended migration protocol in our chemistry guidance for food-contact articles intended for repeated use. Related to this argument, in the December 5, 2014, submission, the petitioners asserted that Ciba's use of a single-use protocol, rather than a repeated-use protocol, does not account for the release of perchlorate over time "as the plastic degrades or is flexed."

Using the single-use protocol results in a higher exposure value than using the repeated-use protocol because: (1) The factors applied to the migration value to determine exposure in the single-use protocol are exaggerative and (2) exposure values from repeated-use articles are typically very small in comparison to single-use articles. Therefore, when a food contact substance will be used in both single- and repeated-use articles, it is more conservative and protective to use the single-use protocol to determine exposure than it is to use the repeated-use protocol. Accordingly, where, as here, a food contact substance is intended to be used in both single- and repeated-use food-contact articles, we use the single-use protocol to determine exposure. We only use the repeated-use protocol for food contact substances that are only used in repeated-use food-contact articles. As Ciba's intended use

of sodium perchlorate monohydrate was not limited to repeated-use food-contact articles, its use of the single-use protocol, rather than the repeated-use protocol, was appropriate.

i. *Background on migration protocols.* The migration protocols in the chemistry guidance provide recommendations on: (1) How to determine the total migration of a substance from a given food-contact surface area (migration value) and (2) how to use that migration value to determine dietary exposure to the migrating substance based upon the mass of food the food-contact surface area will come into contact with and the percentage of the diet that mass of food constitutes. The single-use and repeated-use protocols both provide similar recommendations on how to determine the total amount of migration of a substance from a given food-contact surface area; however, they differ in the assumptions used to determine dietary exposure from that migration value. Specifically, to determine dietary exposure, the single-use protocol applies the following factors to the migration value: (1) FDA's standard assumption of the amount of food in contact with a given surface area of a single-use articles (10 g of food contacting each square inch of food-contact article); (2) food-type distribution factors to account for the variable nature of the food contacting each food-contact article (when applicable); and (3) consumption factors (*i.e.*, the fraction of the daily diet expected to contact a specific type of packaging material). Ciba's calculation did not use food-type distribution factors, and we will not discuss such factors further. By comparison, the repeated-use protocol recommends that dietary exposure be determined by applying to the migration value an estimate of the total mass of food contacting a known food-contact surface area over the service life of the article.

ii. *Use of the single-use protocol for substances in both single- and repeated-use articles.* We consider the exposure calculated from the single-use protocol to address the exposure to a food contact substance used in both single- and repeated-use articles for several reasons, including that: (1) The factors applied to the migration value to determine exposure in the single-use protocol are exaggerative and (2) exposure values from repeated-use articles are typically very small in comparison to single-use articles.

We consider the factors applied to the migration value to determine exposure in the single-use protocol to be exaggerative for several reasons. For

instance, the use of a consumption factor in the single-use protocol assumes that the food contact substance will be used in all food-contact articles that utilize the specific type of material to which the consumption factor applies (as discussed in section III.A.1, consumption factors are specific to a material—*e.g.*, glass, paper, or plastic—in that the consumption factor describes the fraction of the daily diet expected to contact packaging that utilizes that type of material). This is an exaggerative assumption. Food contact substances are used in food-contact articles to perform a specific technological function. It is highly unlikely that all food-contact articles that use the type of packaging material to which a specific consumption factor applies will require that technological function. In addition, the use of a consumption factor does not account for the use of alternative food contact substances that perform the same technological function. The following example illustrates the exaggerative nature of the use of a consumption factor: Under the single-use protocol one could use FDA's consumption factor for colored plastics to determine exposure to a black pigment intended to be added to plastic food packaging. FDA's consumption factor for colored plastics describes the fraction of the daily diet expected to contact packaging that consists of colored plastic, regardless of the color of that plastic. However, not all colored plastic is black, and, therefore, a black pigment would not be added to all colored plastics. In addition, there are multiple black pigments that are authorized to color food-contact articles. Given that alternative black pigments are available for the same purpose, it is unlikely that all black colored plastic packaging would use the particular black pigment at issue.

We also note that exposure values from repeated-use articles are typically very small in comparison to single-use articles because individual repeated-use articles come into contact with significantly larger amounts of food over their service lifetime than individual single-use articles. This results in a much greater food mass-to-surface area ratio for repeated-use articles than the 10 g of food contacting each square inch of food-contact article assumption for single-use articles. The greater food mass-to-surface area ratio for repeated-use articles means that the total amount of migration of a substance from a given food-contact surface area (the migration value) is diluted across a much larger amount of food in comparison to a single-use article, resulting in a

significantly lower dietary concentration.

In conclusion, we consider the exposure to a food contact substance used in both single- and repeated-use articles to be addressed by the exaggerative exposure calculated via the single-use protocol. Therefore, we apply the single-use protocol to food contact substances intended to be used in both single-use and repeated-use food-contact articles.

iii. *Applying worst-case assumptions to available migration information.* In any event, we note that the migration study described in section III.A.2.a followed equivalent or more stringent specifications than those recommended in the single- and repeated-use protocols. In section III.A.3, we explain that, even if the absolute worst-case assumptions for both the single- and repeated-use protocols discussed in the chemistry guidance—that each square inch of food-contact article will come into contact with 10 g of food, and that the article will come into contact with all food in a consumer's diet (in other words, no consumption factors or food type distribution factors are applied to the migration value)—are applied to the migration value determined from this study, the calculated dietary exposure to perchlorate would still fall within the TOR exposure exemption criteria. As such, the petitioners' assertions that Ciba did not follow the repeated-use protocol discussed in the chemistry guidance document and that use of a single-use protocol did not account for the release (*i.e.*, migration) of perchlorate over time if the finished article degrades or is flexed, do not support the conclusion that TOR exemption No. 2005–006 should be revoked.

3. Issues Pertaining to the Use of a Consumption Factor When Calculating Dietary Exposure

The original calculation of dietary exposure resulting from the use allowed by the TOR exemption No. 2005–006 used FDA's consumption factor for substances that may be used in all polymers but only for specific uses. The petition asserted that the use of a consumption factor in this instance is inappropriate for a variety of reasons, including that the consumption factor does not account for the use of sodium perchlorate monohydrate in all antistatic agents and all polymers, nor in reusable bulk packaging for raw materials which the petition said result in finished articles containing sodium perchlorate monohydrate coming into contact with food ingredients that will later be used in the production of

processed foods which are not limited to non-fatty, dry foods.

To address the petitioner's assertions regarding the appropriateness of the use of a consumption factor, we used the results of the migration study provided in comments submitted to the docket for the petition (discussed in section III.A.2.a) to calculate the dietary exposure to perchlorate from the use allowed by TOR exemption No. 2005–006 without the use of a consumption factor (Ref. 11). This approach overestimates the dietary exposure from the use allowed by TOR exemption No. 2005–006 because it assumes that finished articles containing sodium perchlorate monohydrate will come into contact with all foods in a consumer's diet instead of coming into contact with just non-fatty, dry foods. This approach also assumes that all food will come into contact with articles containing sodium perchlorate monohydrate at the maximum allowed use level, which is a conservative assumption because it can be expected that not all finished articles would utilize the substance at the maximum allowed use level. In addition, this calculation utilizes our food mass-to-surface area ratio assumption for consumer (single use) packaging, even though it can be expected that food-contact articles used in food processing and raw material storage have a much larger food mass-to-surface area ratio than consumer packaging (see discussion in section III.A.2.b.ii).

Using this conservative approach, we calculated a perchlorate exposure of 1.5 µg/person/day, which falls within the TOR exemption criteria specified in § 170.39(a)(2)(i) even without the use of a consumption factor. This calculation demonstrates that the assertions raised in the petition pertaining to the use of a consumption factor do not support a conclusion that TOR exemption No. 2005–006 is no longer supportable under § 170.39(g).

4. Inclusion of Use in Contact With Infant Formula and Food for Children Younger Than Two Years Old

As discussed in section III.A.1, the original submission for TOR exemption No. 2005–006 calculated the dietary exposure to perchlorate from the intended use of sodium perchlorate monohydrate. This calculation used several factors, including a consumption factor as well as an assumption of a total food consumption of 3 kg of food per day. Section I.C.3 of the petition stated that because these factors are specific to adults, exposure calculated using these factors could underestimate perchlorate exposure for infants relying on

powdered formula as their sole source of nutrition if sodium perchlorate monohydrate was used in infant formula packaging as a result of TOR exemption No. 2005–006. The petition stated that many infants rely on infant formula as their sole source of nutrition, whereas adults consume a diverse diet. The petition also stated that infants consume more food per bodyweight than adults.

a. *Section 170.39(a)(2)(i) and the use of specific factors to calculate exposure.* As discussed in section III.A.1, § 170.39(a)(2)(i) requires that dietary exposure be calculated using a specified assumption of 3 kg of food per day, which is an assumption for the general adult population. In addition, § 170.39(a)(2)(i) requires that dietary exposure be expressed on a per person basis (µg/person/day), which does not account for the fact that infants consume more food per bodyweight than adults. To account for the fact that infants consume more food per bodyweight than adults, infant dietary exposure would need to be expressed on a bodyweight basis (µg/kg bodyweight/day). Section 170.39(a)(2)(i) does not preclude the use of a consumption factor when calculating exposure; as discussed in section III.A.3, the use of a consumption factor refines exposure by taking into account the fraction of the daily diet expected to contact a specific type of packaging material rather than assuming a given food contact substance will be used in contact with all food in a consumer's diet. However, in section III.A.3 we also demonstrate that the dietary exposure to perchlorate that results from the intended use subject to TOR exemption 2005–006 falls within the TOR exemption criteria even if that exposure is calculated without the use of a consumption factor.

b. *Section 170.39(b) and infant exposure to perchlorate from the TOR use.* Although the intended use for TOR exemption No. 2005–006 results in an exposure of 1.5 µg/person/day or less using the assumptions specified in § 170.39(a)(2)(i), under § 170.39(b) we can decline to grant a TOR exemption in those cases where the available information establishes that the proposed use may pose a public health risk. In certain circumstances, we believe that infants' dietary exposure to a substance may be relevant to whether the proposed use of a substance may pose a public health risk under § 170.39(b). Therefore, to address the petitioner's argument that the use of adult-specific exposure assumptions could underestimate perchlorate exposure for infants that solely consume reconstituted powdered formula, we

calculated a potential exposure to perchlorate in powdered formula from the intended use allowed by TOR exemption No. 2005–006. We calculated this potential infant dietary exposure by applying infant-specific exposure assumptions articulated in FDA's draft guidance for food contact notification submissions for food contact substances that contact infant formula or human milk (Ref. 12), to data from the migration study provided in comments submitted to the docket for the petition (discussed in Section III.A.2.). These infant-specific dietary exposure assumptions include an assumption that an infant (aged 0 to 6 months) consumes 900 g of liquid formula per day (data from the National Health and Nutrition Examination Survey indicate that the highest mean intake for infants 0–6-months is for 2-month old infants, which have an intake of 900 grams/day). FDA also used the corresponding mean body weight of 2-month olds of 6.3 kg bodyweight/infant. The infant-specific potential dietary exposure estimate excludes the use of a consumption factor, because infants aged 0 to 6 months frequently consume human milk and/or infant formula exclusively. Using this approach, we calculated a potential infant dietary exposure to perchlorate in powdered formula from the intended use allowed by TOR exemption No. 2005–006 of 0.019 µg/kg bodyweight/day (Ref. 11). As discussed in section III.B, the petition discusses the safety of perchlorate exposure in the context of the RfD for perchlorate, as well as a value derived from a preliminary, biologically based dose-response model. This calculated potential perchlorate exposure for powdered formula is less than both the RfD for perchlorate (0.7 µg/kg bodyweight/day) and the value derived from the model (0.42 µg/kg bodyweight/day). Thus, the petition does not demonstrate that there is a public health risk to infants under § 170.39(b) as a result of the intended use of perchlorate allowed by TOR exemption No. 2005–006.

5. Consideration of Exposure From Other Sources

The petition asserted that section 409(c)(5)(B) of the FD&C Act and § 170.3(i)(2) require consideration of cumulative exposure to perchlorate in the review of TOR exemption No. 2005–006 and that, if these exposures are considered when calculating the dietary exposure for the TOR exemption, the resultant exposure may exceed the TOR exemption criteria of dietary exposure at or below 1.5 µg/person/day. Specifically, the petition stated that the

original calculation of dietary exposure resulting from the use allowed by TOR exemption No. 2005–006 did not consider dietary exposure to perchlorate as a result of the approved food-contact use of potassium perchlorate listed in § 177.1210, nor as a result of environmental contamination of the food supply.

The use of a food contact substance that is exempted from regulation as a food additive under FDA's TOR regulation is not subject to the factors that apply to the proposed use of a food additive under section 409(c)(5)(B) of the FD&C Act and § 170.3(i)(2). Rather, when we exempt a food-contact use of a substance from regulation as a food additive, our TOR regulation ensures the safety of this food-contact use by setting extremely low limits on migration levels so that its proposed use results in a negligible dietary concentration, and requiring that the substance not be a carcinogen. A premise of the TOR regulation is that if a substance meets these requirements, it presents no other health or safety concerns (see § 170.39(a)(2)). In determining whether the use of a substance qualifies for a TOR exemption, cumulative exposure to a substance is not considered under the TOR regulation because the dietary exposure from the use of a substance that is at or below the threshold of regulation is negligible. Thus, § 170.39(a)(2)(i) provides that the only dietary exposure that is relevant to whether the use of a substance qualifies for a TOR exemption from regulation as a food additive is the dietary exposure resulting from the use in question.

We established the threshold of regulation set forth in § 170.39(a)(2)(i) based on available toxicological data showing that it was feasible to establish a threshold level below which dietary exposures to substances used in food-contact articles are so negligible as to pose no public health or safety concerns (see 60 FR 36582, July 17, 1995). In the preamble to the proposed TOR rule, we explained that our analysis of toxicological data on a large number of representative compounds demonstrated that the noncarcinogenic toxic effects caused by the majority of unstudied compounds would be unlikely to occur below 1,000 ppb (58 FR 52719 at 52722, October 12, 1993). To provide an adequate safety margin, we selected 0.5 ppb as the threshold for regulation, which is 2,000 times lower than the dietary concentration at which the vast majority of studied compounds are likely to cause noncarcinogenic toxic effects (see 58 FR 52719 at 52722). We also analyzed potency data on a

large number of known carcinogens to determine that the 0.5 ppb dietary concentration level would result in negligible risk, even in the event that a substance that is exempted from regulation as a food additive were later shown to be a carcinogen (see 58 FR 52719 at 52722).

Consistent with § 170.39(a)(2)(i), we do not calculate cumulative exposure to a substance in evaluating whether the use of the substance qualified for a TOR exemption. As we explained in an April 2002 guidance for industry entitled, "Preparation of Food Contact Notifications for Food Contact Substances: Toxicology Recommendations," at the time the TOR process was established, FDA determined that, because of the conservative assumptions ordinarily applied in estimating exposure, the cumulative exposure from a limited number of trivial food additive uses is not likely to be more than negligible. Accordingly, in the case of the TOR exposure levels, it was not necessary to utilize cumulative exposure levels. FDA believes that the determination made in establishing its TOR is still sound (Ref. 13).

Therefore, contrary to the petition's assertions, under FDA's TOR regulations, the dietary exposures to perchlorate that are not a result of the use specified in the TOR exemption No. 2005–006 are not considered under the exposure criteria for the TOR exemption.

6. Inconsistencies Between the Intended Use Reviewed by FDA and That Listed on Our Inventory of Effective TOR Exemptions

We maintain an inventory of effective TOR exemptions on our Web site (Ref. 1). The originating submission for TOR exemption No. 2005–006 requested a use for sodium perchlorate monohydrate in antistatic agents at a maximum level of 4 percent by weight. The antistatic agent would be used in finished plastic at a maximum level of 30 percent by weight. The finished plastic would be used in contact with non-fatty, dry foods (Food Type VIII) only. This is the intended use that we considered in 2005 when we determined that the information provided in the originating request demonstrated that the use would result in a dietary exposure at or below the 1.5 µg/person/day criteria. The petition asserted that this intended use was expanded in the final letter for the TOR exemption No. 2005–006 to permit the finished article to be used in contact with all dry foods. The petition also asserted that the intended use was

further expanded in the listing on our inventory of effective TOR exemptions, to include the use of sodium perchlorate monohydrate in all types of food contact materials at a maximum use level of 4 percent by weight in the finished article.

We agree that the intended use for TOR exemption No. 2005–006 was inaccurately described in the final letter for the TOR exemption No. 2005–006 and the inventory of effective TOR exemptions. On August 17, 2015, we corrected the listing for TOR exemption No. 2005–006 on the inventory of effective TORs on our Web site to be consistent with the intended use reviewed by FDA when the TOR exemption became effective and thereby address the petition's assertions regarding the description of the intended use for TOR exemption No. 2005–006. We further revised the listing for TOR exemption No. 2005–006 on September 19, 2016, to clarify that TOR exemption No. 2005–006 allows the use of perchlorate in the manufacture of antistatic agents for use in all polymeric food-contact articles and not only polymeric food packaging.

B. Arguments Based on "Significant New Information"

Part I.D. of the petition identified the following four categories of "significant new information" that has become available after TOR exemption No. 2005–006 became effective: "First, additional research shows that the endpoint used in the decision was not the most appropriate or sensitive one to protect fetuses and infants from permanent brain damage. Second, it is now known that nitrates and thiocyanates are pharmacologically-related to perchlorate and, therefore, must be considered in any safety evaluation of perchlorate as an additive. Third, in 2011, FDA acknowledged that the 50 ppb migration to dry-food default assumption ("virtually nil" migration) may be flawed based on research evidence from Europe. Fourth, FDA has demonstrated that there is widespread contamination of the food supply with perchlorate that must be considered." The petition asserted that this new information warrants a reevaluation of TOR exemption No. 2005–006 under § 170.39(g).

We will first address the petition's arguments regarding hypothyroxinemia and its proposed acceptable daily intake level, then discuss the petition's arguments pertaining to perchlorate in the food supply and pharmacologically related substances, and finally the arguments pertaining to our 50 ppb migration concentration assumption.

1. Proposed Acceptable Daily Intake Level Based on Hypothyroxinemia

The petition proposed an acceptable daily intake (ADI) value in place of the RfD for perchlorate and argues that the exposure from the TOR use exceeds the ADI proposed in the petition. The petition stated that the ADI proposed in the petition better accounts for hypothyroxinemia as a potential result of perchlorate exposure than does the RfD. However, under our TOR regulations, because a substance is expected to migrate into food at negligible levels, a non-carcinogenic endpoint such as hypothyroxinemia is not relevant unless the use of the substance may pose a public health risk under § 170.39(b). As discussed further in this section, the information in the petition does not support such a conclusion under § 170.39(b) because: (1) Even if hypothyroxinemia were relevant, the petition does not demonstrate that the proposed ADI better accounts for the potential for perchlorate to cause hypothyroxinemia than the RfD for perchlorate; (2) the proposed ADI is based on the results of a preliminary model; and (3) even if it were appropriate to base an ADI on the results of the preliminary model, the resulting ADI would still be above the exposure from the TOR use.

a. Summary of petition's discussion on hypothyroxinemia. The petition asserted that new information, available since TOR exemption No. 2005–006 became effective, demonstrates that exposure to perchlorate can result in hypothyroxinemia. As noted in section I.D.2, hypothyroxinemia means that the ft4 value is at the lower end of the normal range with normal levels of TSH in the blood. The petition asserted that the SAB report, which was issued after the TOR exemption became effective, identified the potentially sensitive population for perchlorate exposure to be fetuses of hypothyroxinemic pregnant women. This is in contrast to the NRC report, which identified the potentially sensitive population for perchlorate exposure to be fetuses of pregnant women with hypothyroidism or iodide deficiency (both the SAB report and the NRC report are discussed in section I.D.2). Based upon this difference, the petition asserted that the RfD, which was based on the NRC review, does not provide sufficient protection to susceptible populations. The petition also asserted that IUI, which is the basis of the RfD, is a less sensitive endpoint than hypothyroxinemia.

The petition proposed an ADI of 0.042 µg/kilogram bodyweight/day for

perchlorate based on the amount of perchlorate exposure that may result in hypothyroxinemia in iodide-deficient pregnant women as reported by FDA scientists in a 2013 Lumen et al. article (Ref. 14). Lumen et al. summarizes the results of a proof-of-concept, biologically based dose-response (BBDR, also known as a PBPK/PD) model that is specific to near-term human mothers and fetuses. This model used PBPK/PD data to predict perchlorate intake levels that could produce thyroid hormone perturbations at varying levels of maternal iodide intake. The petition derived its proposed ADI by applying two ten-fold uncertainty factors to the results presented in the Lumen et al. article. One ten-fold uncertainty factor is applied to account for intraspecies variability, while the second tenfold uncertainty factor is applied to account for the assertion that the perchlorate exposure value provided in the Lumen et al. article is based on a lowest observed adverse effect level (LOAEL) rather than a no observed adverse effect level (NOAEL). (The petition also stated that additional, unquantified uncertainty factors should be applied to its proposed ADI to account for deficiencies in the model, but it does not include these factors in its calculation of the proposed ADI.) The petition subsequently compared its proposed ADI to a dietary exposure to perchlorate resulting from the use allowed by TOR exemption No. 2005–006 as calculated in the petition. As the exposure to perchlorate calculated in the petition is higher than the derived ADI, the petition asserted that TOR exemption No. 2005–006 should be revoked.

b. FDA's consideration of the petition's discussion on hypothyroxinemia. First, the petition contended that its proposed ADI accounts for the potential for perchlorate to cause hypothyroxinemia while the RfD for perchlorate does not. However, the petition does not adequately support its assertion that the RfD for perchlorate fails to account for the potential for perchlorate to cause hypothyroxinemia (Ref. 15). The SAB's and NRC's identification of different sensitive populations for perchlorate exposure is not a basis for concluding that the RfD provides insufficient protection to the sensitive population identified by the SAB, nor that the RfD does not account for the potential for perchlorate to cause hypothyroxinemia. The RfD for perchlorate is based on the IUI. As previously stated, the basis of the MOA framework for perchlorate is that IUI must first occur prior to any

resultant thyroid hormone perturbations such as hypothyroxinemia or hypothyroidism. This contradicts the petition's assertion that IUI is a less sensitive endpoint than hypothyroxinemia. The NRC and SAB used the MOA framework for perchlorate in determining their recommendations. The MOA framework was also used in the development of the Lumen et al. BBDR model cited by the petitioners (Ref. 14). Furthermore, the tenfold intraspecies uncertainty factor utilized by the NRC in the derivation of the RfD is a default value that is intended to account for the entire range of sensitivity among humans to perchlorate exposure. The petition did not provide support for its contention that this default, intraspecies uncertainty factor is not inclusive of fetuses of pregnant women with hypothyroxinemia.

Second, the 2013 Lumen et al. BBDR model that forms the basis of the ADI proposed by the petitioners is a preliminary model (Ref. 15) that FDA believes is not appropriate to use in a quantitative risk assessment as presented in the petition. Because FDA does not believe that the model should be used for a quantitative risk assessment due to the preliminary nature of the analysis, consideration of the appropriateness of the uncertainty factors proposed by the petitioners is premature at this time. Since the 2013 Lumen et al. article, we have worked with EPA scientists to further develop the model cited by the petitioners. On January 10 and 11, 2017, EPA's contractor conducted an independent, scientific public peer review of EPA's draft BBDR model and report. EPA is currently considering peer reviewer comments. EPA intends to seek peer review of a second report that evaluates methods to apply the final BBDR model to develop a maximum contaminant level goal for perchlorate in drinking water (see 81 FR 87553, December 5, 2016).

Third, we note that even if the approach taken in the petition were appropriate—*i.e.*, to calculate a risk assessment value based on the results of the preliminary model referenced in the petition, and to apply both 10-fold uncertainty factors specified in the petition (one to account for a LOAEL and one to account for intraspecies variability) to the amount of perchlorate exposure that may result in hypothyroxinemia in iodide-deficient pregnant women as reported in the Lumen et al. article—the resultant ADI calculated in the petition is 0.042 µg/kg bodyweight/day. This risk assessment value is higher than the exposure to

perchlorate as a result of TOR exemption No. 2005–006 as determined by Ciba (0.063 µg per chlorate/person/day, which equates to 0.001 µg/kg bodyweight/day utilizing FDA’s assumption of 60 kg bodyweight for adults as described in the chemistry guidance), as well as the exposures determined from the migration study discussed in section II.A.2 (for adults: 0.075 µg/person/day which equates to 0.001 µg/kg bodyweight/day; and for infants: 0.019 µg/kilogram bodyweight/day—see section II.A.4). Therefore, even if deriving a risk assessment value based on the results presented in the Lumen et al. article were appropriate, the exposure to perchlorate as a result of TOR exemption No. 2005–006 is lower than the resulting risk assessment value, and therefore would not support the assertion by the petitioners that the results presented in the Lumen et al. article “raises questions about the safe level of exposure to perchlorate relied on by Ciba when the Agency approved TOR No. 2005–006.”

2. Argument Related to Cumulative Dietary Exposure From Perchlorate, and Substances Pharmacologically Related to Perchlorate, in the Food Supply

The petition asserted that new information has become available, since FDA issued the listing regulation for potassium perchlorate in § 177.1210 and TOR exemption No. 2005–006, that nitrate and thiocyanate are pharmacologically related to perchlorate, and that perchlorate contamination of the food supply is widespread. The petition also asserted that we are required to take into account the cumulative effect of these substances in the diet.

As discussed in section III.A.5, under § 170.39(a)(2)(i), we do not calculate cumulative dietary exposure to a substance or pharmacologically related substances in evaluating whether the use of the substance qualifies for a TOR exemption from regulation as a food additive. Under § 170.39(a)(2)(i), the only dietary exposure that is relevant to whether the use of a substance qualifies for a TOR exemption from regulation as a food additive is the dietary exposure resulting from the use in question. Therefore, the petition’s argument regarding cumulative dietary exposure to perchlorate or pharmacologically related substances does not support a conclusion that TOR exemption No. 2005–006 is no longer supportable.

3. Alleged Flaws in FDA’s 50 ppb Migration Concentration Assumption

The petition stated that FDA, in a 2011 speech by an FDA scientist,

acknowledged potential flaws in the 50 ppb migration concentration assumption for migration to non-fatty, dry foods (Food Type VIII). To support this statement, the petition cited a 2011 article which summarizes the speech given by the FDA scientist (Ref. 16). The petition also asserted that the 50 ppb migration assumption is particularly flawed for perchlorate, which is used in packaging to neutralize the static charge on dry food.

The migration study provided in comments submitted to the docket for the petition (discussed in section III.A.2.a) found that perchlorate migrated into a simulant for non-fatty, dry foods at a concentration of 0.5 ng perchlorate/g food, or 0.5 ppb. As noted, this value is substantially less than the 50 ppb migration concentration assumption provided in our chemistry guidance and indicates that the 50 ppb migration concentration assumption does not understate migration from the intended use of sodium perchlorate monohydrate into non-fatty, dry foods. As a result, the petition’s contentions regarding alleged flaws in the 50 ppb migration concentration assumption, both generally and as applied to perchlorate, do not support a conclusion that TOR exemption No. 2005–006 is no longer supportable.

C. Alleged Disproportionate Impact of Perchlorate on Children’s Health and FDA’s Obligation Under Executive Order 13045

Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (see 62 FR 19885, April 23, 1997), provides in part that, “to the extent permitted by law and appropriate, and consistent with the agency’s mission,” each Federal Agency “shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks,” which are defined as “risks to health or to safety that are attributable to products or substances that the child is likely to come in contact with or ingest (such as the air we breath [sic], the food we eat, the water we drink or use for recreation, the soil we live on, and the products we use or are exposed to).” The petition asserted that, because perchlorate has a disproportionate impact on infants, the Executive Order warrants the use by FDA of additional safety factors beyond those provided in § 170.22 (21 CFR 170.22) when considering the safety of the food-contact uses of perchlorate. Specifically, the petition contended that safety factors in addition to the 100-fold safety factor stated in § 170.22 are

necessary due to deficiencies in the Lumen et al. BBDR model (discussed in section III.B.1) and because a pregnant woman’s short-term exposure to perchlorate can cause irreversible harm to the fetal brain if the woman has low iodine intake.

We note that § 170.22 pertains to safety factors used in applying animal experimentation data to man. As the safety arguments presented in the petition utilize data obtained from human subjects, and the petition discusses specific safety factors for each argument, § 170.22 is not relevant to the safety arguments presented in the petition. Furthermore, in the December 5, 2014, submission the petition stated that the tenfold safety factor utilized to derive the RfD for perchlorate is consistent with Executive Order 13045.

With respect to the petition’s request to apply additional safety factors, section III.B.1 explains that FDA believes the results of the BBDR model are preliminary in nature and not an appropriate basis for a quantitative risk assessment as presented in the petition. A discussion of whether or not uncertainty factors should be applied is premature at this time. For these reasons, we believe that our analysis of the potential health effects of perchlorate satisfies Executive Order 13045 and that the use of additional safety factors is not necessary.

D. Request To Issue a New Regulation Under 21 CFR Part 189

Part II of the petition asserted that, if FDA were to revoke TOR exemption No. 2005–006, publication of the notice of revocation in the **Federal Register** would be insufficient to alert industry, and therefore requested that we issue a new regulation under part 189. The requested regulation would prohibit the use of perchlorates in the manufacture of antistatic agents to be used in food-contact articles, which is the use of perchlorate allowed by TOR exemption No. 2005–006.

Because we conclude that TOR exemption No. 2005–006 remains supportable under § 170.39, we decline to propose a regulation under part 189 prohibiting this use of perchlorate.

IV. Comments on the Filing Notice

We received very few comments on the petition. Those comments that discussed the safety of the use of perchlorate in food contact applications did not provide any additional data to that presented in the petition.

In this section we discuss the issues raised in the remaining comments. We preface each comment discussion with a numbered “Comment” and each

response by the word “Response” to make it easier to identify comments and our responses. We have numbered each comment to help distinguish among different topics. The number assigned is for organizational purposes only and does not signify the comment’s value, importance, or the order in which it was received.

(Comment 1) One comment provided a migration study for sodium perchlorate monohydrate from a worst-case polymeric resin into a dry food simulant.

(Response) This study is discussed in section III.A.2.

(Comment 2) Several comments stated that the use of potassium perchlorate as an additive in closure-sealing gaskets for food containers has been abandoned.

(Response) The abandonment of potassium perchlorate as an additive in closure-sealing gaskets is the subject of a separate food additive petition, 6B4816, which we address elsewhere in this edition of the **Federal Register**.

(Comment 3) Another comment stated that the petition’s request that FDA add perchlorate to the list of prohibited substances contained in part 189 is based upon the identification of a hazard relating to a class of chemical substances. The comment asserted that an approach to safety assessment based on hazard identification is a departure from FDA’s practice of evaluating the safety of food contact materials based on their intended use.

(Response) As we are declining to propose a regulation under part 189 prohibiting the use of perchlorates as a food contact substance in antistatic agents (see section V), it is not necessary to respond to this comment.

V. Conclusion

We reviewed the petition and with respect to the petition’s first request, we have determined that the dietary exposure to sodium perchlorate monohydrate as a result of the use allowed by the TOR exemption No. 2005–006 does not exceed the TOR exemption criteria in § 170.39(a)(2)(i) and that the data and information provided do not support a conclusion that TOR exemption No. 2005–006 is no longer supportable. With respect to the petition’s second request, we decline to propose a regulation under part 189 prohibiting the use of perchlorates as a food contact substance in antistatic agents because proposing such a regulation would be inconsistent with our conclusion that the data and information provided in the petition do not support a conclusion that TOR exemption No. 2005–006 is no longer supportable. With respect to the

petition’s third request, which is the sole request that is the proper subject of a food additive petition, the food additive use of potassium perchlorate has been removed from § 177.1210 in a final rule published elsewhere in this issue of the **Federal Register** and we decline to address the petitioners’ assertions regarding the safety of the food additive use. Therefore, we are denying all three requests, and we are denying the petition in full.

VI. Objections

Any person that may be adversely affected by this order may file with the Division of Dockets Management (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

It is only necessary to send one set of documents. Identify documents with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <https://www.regulations.gov>. We will publish notice of the objections that we have received or lack thereof in the **Federal Register**.

As explained in section II.C, only the petition’s request to amend § 177.1210 is within the scope of a food additive petition under section 409(b) of the FD&C Act. The remaining two requests are not within the scope of a food additive petition and our denial of these requests is not an order under section 409(c)(1)(B) of the FD&C Act. Therefore, the provision for objections and public hearing under section 409(f) of the FD&C Act does not apply to these two requests.

VII. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <https://www.regulations.gov>. FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

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8. Stedman, T.L. 2006. “Stedman’s Medical Dictionary.” Philadelphia: Lippincott Williams & Wilkins. 28th ed. ISBN 978–0781733908.
9. FDA. “Guidance for Industry: Preparation of Premarket Submissions for Food Contact Substances: Chemistry Recommendations.” Available at <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/IngredientsAdditivesGRASPackaging/ucm081818.htm>.

10. FDA Memorandum from J. Smith, September 15, 2005.
11. FDA Memorandum from R. Costantino to P. Honigfort, March 31, 2017.
12. FDA. "Draft Guidance for Industry: Preparation of Food Contact Notifications for Food Contact Substances in Contact with Infant Formula and/or Human Milk." December 2016. Available at <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocuments/RegulatoryInformation/ucm528215.htm>.
13. FDA. "Guidance for Industry: Preparation of Food Contact Notifications for Food Contact Substances: Toxicology Recommendations." Available at <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocuments/RegulatoryInformation/ucm081825.htm>.
14. Lumen A., D.R. Mattie, and J.W. Fisher. "Evaluation of Perturbations in Serum Thyroid Hormones During Human Pregnancy Due to Dietary Iodide and Perchlorate Exposure Using a Biologically Based Dose-Response Model." *Toxicological Sciences*. 133(2):320–41, 2013.
15. FDA Memorandum from G. Patton, P. Honigfort, and J. Aungst to Administrative File, March 31, 2017.
16. Clapp, S., "FDA Chemist Says Agency's Food Contact Advice is 'Showing Its Age.'" *Food Chemicals News*. 53(30): 11–12, 2011.

Dated: April 28, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017-08987 Filed 5-3-17; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG-2016-0897]

RIN 1625-AA01

Anchorage Ground; Atlantic Ocean, Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its anchorage regulations to establish a new offshore anchorage area approximately 7 nautical miles northeast of the St. Johns River inlet, Florida. Currently, there is not a dedicated deep draft offshore anchorage for commercial ocean-going vessels arriving at the Port of Jacksonville. Establishing an adequate and dedicated offshore anchorage will alleviate hazardous conditions with vessels anchoring in the common approaches to

the St. Johns River. This action is necessary to ensure the safety and efficiency of navigation for all vessels transiting in and out of the Port of Jacksonville. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 5, 2017.

ADDRESSES: You may submit comments identified by docket number USCG-2016-0897 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Allan Storm, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone 904-714-7616, email Allan.H.Storm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
 DHS Department of Homeland Security
 FR Federal Register
 NPRM Notice of proposed rulemaking
 § Section
 U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard, with the recommendation from the St. Johns Bar Pilot Association (SJBPA) and Jacksonville Marine Transportation Exchange (JMTX) Harbor Safety Committee, developed the dedicated offshore anchorage area approximately 7 nautical miles northeast of the St. Johns River inlet, Florida proposed in this notice of proposed rulemaking (NPRM).

The purpose of this proposed rulemaking is to improve the navigational safety, traffic management and port security for the Port of Jacksonville.

Currently, there is not a dedicated deep draft offshore anchorage for commercial ocean-going vessels arriving at the port of Jacksonville. Vessels have routinely been recommended to anchor 1½ nautical miles northeast of the "STJ" entrance buoy. However, many mariners are hesitant to anchor in this location due to its proximity to the charted danger area, which is related to unexploded ordnance on the sea floor. Without a designated charted anchorage area, many vessels end up drifting or anchoring in the common approaches to the St. Johns River, creating a potential

hazardous condition for all vessels transiting in and out of the Port of Jacksonville. These conditions may worsen with the expected growth in the number of vessels, and the likelihood of large vessels calling on Jacksonville in the near future.

In 2013, Coast Guard Sector Jacksonville hosted a meeting to discuss the establishment of a commercial anchorage off the entrance to the St. Johns River. Members from SJBPA, JMTX, Jacksonville Port Authority, Florida Docking Masters, Army Corp of Engineers, NOAA, local tug companies, and the local Shrimp Producers Association all provided input to the proposed anchorage outlined in this notice. Additionally, in April 2016, Coast Guard Sector Jacksonville conducted a focused Waterways Analysis and Management System (WAMS) study for the proposed offshore anchorage area. No additional findings were found and no comments of concern were received from this WAMS study.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

III. Discussion of Proposed Rule

The Coast Guard proposes to amend its anchorage regulations to establish an offshore anchorage area approximately seven nautical miles northeast of the St. Johns River inlet, Florida. There currently is not a dedicated deep draft offshore anchorage for commercial ocean-going vessels arriving at the port of Jacksonville. This action is necessary to ensure the safety and efficiency of navigation for all vessels transiting in and out of the Port of Jacksonville. The anchorage area's dimensions are approximately three nautical miles by two nautical miles and would encompass approximately six square nautical miles.

The anchorage boundaries are described, using precise coordinates, in the proposed regulatory text at the end of this notice.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the

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 costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See the OMB Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This regulatory action determination is based on the fact that there will be minimal impact to routine navigation because the proposed anchorage area would not restrict traffic as it is located well outside of the established navigation channel. Vessels would still be able to maneuver in, around, and through the anchorage.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the anchorage area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing one offshore anchorage ground; the overall size of the anchorage area will be approximately 6 square nautical miles. The anchorage ground is not designated a critical habitat or special management area. Normally such actions are categorically excluded from further review under paragraph 34(f) of Figure 2–1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 110.184 to read as follows:

§ 110.184 Atlantic Ocean, Offshore Jacksonville, FL.

(a) *The anchorage ground.* All waters of the Atlantic Ocean encompassed within the following points: Starting at Point 1 in position 30°29.08' N., 81°18.21' W.; thence south to Point 2 in position 30°26.06' N., 81°18.21' W.; thence east to Point 3 in position 30°26.06' N., 81°16.05' W.; thence north to Point 4 in position 30°29.08' N., 81°16.05' W.; thence west back to origin. All coordinates are North American Datum 1983.

(b) *The regulations.* (1) Commercial vessels in the Atlantic Ocean in the vicinity of the Port of Jacksonville must anchor only within the anchorage area hereby defined and established, except in cases of emergency.

(2) Before entering the anchorage area, all vessels must notify the Coast Guard Captain of the Port (COTP) Jacksonville on VHF–FM Channel 22A.

(3) All vessels within the designated anchorage area must maintain a 24-hour bridge watch by a licensed or credentialed deck officer proficient in English, monitoring VHF–FM channel 16. This individual must confirm that the ship's crew performs frequent

checks of the vessel's position to ensure the vessel is not dragging anchor.

(4) Vessels may anchor anywhere within the designated anchorage area provided that: Such anchoring does not interfere with the operations of any other vessels currently at anchorage; and all anchor and chain or cable is positioned in such a manner to preclude dragging.

(5) No vessel may anchor in a “dead ship” status (that is, propulsion or control unavailable for normal operations) without the prior approval of the COTP Jacksonville. Vessels experiencing casualties such as a main propulsion, main steering or anchoring equipment malfunction or which are planning to perform main propulsion engine repairs or maintenance, must immediately notify the COTP Jacksonville on VHF–FM Channel 22A.

(6) No vessel may anchor within the designated anchorage for more than 72 hours without the prior approval of the COTP Jacksonville. To obtain this approval, contact the COTP Jacksonville on VHF–FM Channel 22A.

(7) The COTP Jacksonville may close the anchorage area and direct vessels to depart the anchorage during periods of adverse weather or at other times as deemed necessary in the interest of port safety or security.

(8) Commercial vessels anchoring under emergency circumstances outside the anchorage area must shift to new positions within the anchorage area immediately after the emergency ceases.

Dated: April 27, 2017.

S.A. Buschman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2017–09036 Filed 5–3–17; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–249; Report No. 3073]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: A Petition for Reconsideration (Petition) has been filed in the Commission's rulemaking proceeding by Andrew Jay Schwartzman, on behalf of Prometheus Radio Project.

DATES: Oppositions to the Petition must be filed on or before May 19, 2017. Replies to an opposition must be filed on or before May 30, 2017.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Nessinger, Senior Counsel, Audio Division, Media Bureau, at: (202) 418–2700 or email: Thomas.Nessinger@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3073, released April 17, 2017. The full text of the Petition is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be accessed online via the Commission's Electronic Comment Filing System at: <https://ecfsapi.fcc.gov/file/104101216505007/17-04-10%20Prometheus%20Petition%20for%20Reconsideration%20of%20AMR%20Order%20AS%20FILED.pdf>. The Commission will not send a copy of this document pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this document does not have an impact on any rules of particular applicability.

Subject: In the Matter of Revitalization of the AM Radio Service, FCC 17–14, released by the Commission on February 24, 2017, in MB Docket 13–249, published at 82 FR 13069, March 9, 2017. The document is being published pursuant to 47 CFR 1.429(e). See also 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 2017–08953 Filed 5–3–17; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2017–0018; FXES1113090000 178 FF09E42000]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Remove the Bone Cave Harvestman From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove

the Bone Cave harvestman (*Texella reyesi*) from the List of Endangered and Threatened Wildlife (*i.e.*, “delist” the species) under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the Bone Cave harvestman or its habitat at any time.

DATES: The finding announced in this document was made on May 4, 2017.

ADDRESSES: A copy of the petition is available on <http://www.regulations.gov> under Docket No. FWS-R2-ES-2017-0018, or by request from the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512-490-0057; or facsimile 512-490-0974. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

At the time we received the petition discussed below (June 2, 2014), the standard for substantial scientific or commercial information with regard to this 90-day petition finding was “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)). If we find that a petition presents substantial scientific or commercial information, we are required to promptly commence a review of the status of the species, and we will subsequently summarize the status review in our 12-month finding.

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be delisted for one of three reasons: Extinction,

recovery, or the original data for classification were in error. A species may be determined to be an endangered or threatened species for the purpose of listing, or recovered for the purpose of delisting, as result of an assessment of the five factors described in section 4(a)(1) of the Act.

Evaluation of a Petition To Delist the Bone Cave Harvestman, Which Is Listed as an Endangered Species Under the Act

Species and Range

The Bone Cave harvestman (*Texella reyesi*) occurs in Travis and Williamson Counties, Texas, and was listed as an endangered species on September 16, 1988 (53 FR 36029). See 58 FR 43818, August 18, 1993, for more information.

Petition History

On June 2, 2014, we received a petition from John Yearwood, Kathryn Heidemann, Charles and Cheryl Shell, the Walter Sidney Shell Management Trust, the American Stewards of Liberty, and Steven W. Carothers requesting that we remove the endangered Bone Cave harvestman from the Federal List of Endangered and Threatened Wildlife. The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required at that time in 50 CFR 424.14(a). The Service and National Marine Fisheries Service (“Services”) revised the regulations at 50 CFR 424.14 to clarify the procedures under which the Services evaluate petitions effective October 27, 2016 (81 FR 66462; September 27, 2016). We originally received the petition that is the subject of this document on June 2, 2014, with supplemental information received on October 6, 2016. We, therefore, evaluated this petition under the 50 CFR 424.14 requirements that were in effect prior to October 27, 2016, as those requirements applied when the petition and supplemental information were received. At that time, our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding was “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)(1)). On June 1, 2015, the Service published a 90-day finding in the **Federal Register** (80 FR 30990) that the petition did not present substantial scientific or commercial information indicating that the petitioned action was warranted. On December 15, 2015, the American

Stewards of Liberty, Charles and Cheryl Shell, Walter Sidney Shell Management Trust, Kathryn Heidemann, and Robert V. Harrison, Sr., challenged the June 1, 2015, 90-day finding in Federal district court. The Service sought the court’s permission to reconsider the 90-day finding. On December 22, 2016, the court ordered the Service to complete a 90-day finding and deliver that finding to the **Federal Register** on or before March 31, 2017, and subsequently extended to May 1, 2017. This finding addresses the court’s order and the 2014 petition.

Recently, we began publishing multiple 90-day petition findings in a single, batched **Federal Register** notice and using a template format for supplementary information for each finding, to ensure consistency and transparency among findings. We are providing the supporting information for this finding in both the former single-petition **Federal Register** notice format that was used for the prior finding, and the new batched-notice template format. Both of these rely on identical information and can be found along with this **Federal Register** notice at Docket No. FWS-R2-ES-2017-0018. The prior traditional **Federal Register** notice also includes some additional information not included in the petition review form with respect to information such as representation, redundancy, and resilience.

Finding

Based on our review of the petition, sources cited in the petition, and the additional information provided, we find that the petition does not present substantial scientific or commercial information indicating that delisting the Bone Cave harvestman may be warranted. Although this finding ends our formal consideration of the petition, we are in the process of conducting a species status assessment and 5-year status review of the Bone Cave harvestman. Specifically, section 4(c)(2)(A) of the Act requires us to review each listed species’ status at least once every 5 years. On April 15, 2015, we published a notice in the **Federal Register** initiating this review (80 FR 20241). The purpose of a 5-year review is to ensure that listed species have the appropriate level of protection under the Act. In this case, we are developing a species status assessment as a tool to inform the 5-year status review. The 5-year review will consider whether the species’ status has changed since the time of its listing or its last status review and whether it should be reclassified as threatened or delisted. We invite the public, including the petitioners and

other interested parties, to submit new data and information for consideration in this ongoing process.

The basis for our finding on this petition, and other information regarding our review of this petition can be found as an appendix at <http://www.regulations.gov> under Docket No. FWS-R2-ES-2017-0018 in the Supporting Documents section. This 90-day finding supersedes the Service's previous June 1, 2015, 90-day finding, and is made pursuant to the court's December 22, 2016, order; the 2014

petition; and the additional reference materials accompanying the petition.

References Cited

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

Authors

The primary authors of this notice are staff members of the Austin Ecological Services Field Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 20, 2017.

James W. Kurth,

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

[FR Doc. 2017-09010 Filed 5-3-17; 8:45 am]

BILLING CODE 4333-15-P

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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: 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 that the Tennessee Advisory Committee will hold a meeting on Wednesday, May 24, 2017, for discussing potential participants to the hearing on civil asset forfeiture in Tennessee.

DATES: The meeting will be held on Wednesday, May 24, 2017, at 12:30 p.m. EST.

ADDRESSES: The meeting will be by teleconference. Toll-free call-in number: 877-874-1569, conference ID: 2389079.

FOR FURTHER INFORMATION CONTACT: Jeff Hinton, DFO, at jhinton@usccr.gov or (404) 562-7006.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 877-874-1569, conference ID: 2389079. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments;

the comments must be received in the regional office by May 19, 2017. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. They may also be faxed to the Commission at (404) 562-7005, or emailed to Regional Director, Jeffrey Hinton at jhinton@usccr.gov. Persons who desire additional information may contact the Southern Regional Office at (404) 562-7000.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via [www.facadatabase.gov](http://facadatabase.gov) under the Commission on Civil Rights, Tennessee Advisory Committee link: <http://facadatabase.gov/committee/meetings.aspx?cid=275>. Persons interested in the work of this Committee are directed to the Commission's Web site, <http://www.usccr.gov>, or may contact the Southern Regional Office at the above email or street address.

Agenda

Welcome and Call to Order
Diane Dilanni, Tennessee SAC
Chairman
Jeff Hinton, Regional Director
Regional Update—Jeff Hinton
New Business: Discussion of Potential Participants to the Hearing:
Diane Dilanni, Tennessee SAC
Chairman/Staff/Advisory
Committee
Public Participation
Adjournment

Dated: May 1, 2017.

David Mussatt,
Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017-09007 Filed 5-3-17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) seeks public comment on

any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period July 1, 2016, through December 31, 2016.

DATES: Comments must be submitted within 30 days after publication of this notice.

ADDRESSES: See the Submission of Comments section below.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Brendan Quinn, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3965 or (202) 482-5848, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2008, section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008) was enacted into law. Under this provision, the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies.

Commerce submitted its last subsidy report on December 16, 2016. As part of its newest report, Commerce intends to include a list of subsidy programs identified with sufficient clarity by the public in response to this notice.¹

Request for Comments

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries the exports of which accounted for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001 (which accounts for the vast majority of imports), during the period July 1, 2016 through December 31, 2016. Official

¹ On April 24, 2017, the Department issued its preliminary determination in the on-going countervailing duty investigation involving Certain Softwood Lumber Products from Canada. See *Certain Softwood Lumber Products From Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 19657 (April 28, 2017).

U.S. import data published by the United States International Trade Commission Tariff and Trade DataWeb indicate that only one country, Canada, exported softwood lumber to the United States during that time period in amounts sufficient to account for at least one percent of U.S. imports of softwood lumber products. We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period January 1, 2017 through June 30, 2017, to select the countries subject to the next report.

Under U.S. trade law, a subsidy exists where an authority: (i) Provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred.²

Parties should include in their comments: (1) The country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (at least 3–4 sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.

Submission of Comments

Persons wishing to comment should file comments by the date specified above. Comments should only include publicly available information. Commerce will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. Any such comments or materials will be returned to the submitter and will not be considered in Commerce's report. Comments must be filed in electronic Portable Document Format (PDF) submitted on CD-ROM or by email to the email address of the EC Webmaster, below.

The comments received will be made available to the public in PDF on the Enforcement and Compliance Web site at the following address: <http://enforcement.trade.gov/sla2008/sla->

index.html. Any questions concerning file formatting, access on the Internet, or other electronic filing issues should be addressed to Laura Merchant, Enforcement and Compliance Webmaster, at (202) 482–0367, email address: webmaster_support@trade.gov.

All comments and submissions in response to this Request for Comment should be received by Commerce no later than 5 p.m. Eastern Standard Time on the above-referenced deadline date.

Dated: April 28, 2017.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017–08956 Filed 5–3–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–924]

Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is rescinding the administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from the People's Republic of China for the period November 1, 2015, through October 31, 2016.

DATES: Effective May 4, 2017.

FOR FURTHER INFORMATION CONTACT: Eli Lovely, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1593.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 2017, based on a timely request for review by Mitsubishi Polyester Film, Inc. and SKC, Inc. (collectively, the petitioners), the Department of Commerce (Commerce) published in the *Federal Register* a notice of initiation of an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the People's Republic of China (PRC) with respect to four companies for the period of review (POR) November 1, 2015,

through October 31, 2016.¹ On February 16, 2017, pursuant to 19 CFR 351.213(d)(1), the petitioners timely withdrew their request for an administrative review for all of the companies for which Commerce initiated a review.²

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, the petitioners timely withdrew their review request by the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. Therefore, in response to the timely withdrawal of the request for review, and in accordance with 19 CFR 351.213(d)(1), we are rescinding the administrative review of the antidumping duty order on PET film from the PRC for the period November 1, 2015, through October 31, 2016, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Because this administrative review is being rescinded in its entirety, the entries to which this administrative review pertain shall be assessed antidumping duties that are equal to the cash deposits of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP within 15 days after the publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 4294 (January 13, 2017) (*Initiation Notice*).

² See Letter from Petitioners to the Secretary of Commerce "Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Withdrawal of Request for Antidumping Duty Administrative Review," dated February 16, 2017.

² See section 771(5)(B) of the Tariff Act of 1930, as amended.

assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 28, 2017.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017-08992 Filed 5-3-17; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA-2017-HQ-0005]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 3, 2017.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket 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.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Institute for Water Resources, Navigation and Civil Works Decision Support Center, 7701 Telegraph Road, Alexandria, VA 22315-3868, ATTN: Steven D. Riley or call 703-428-6380.

SUPPLEMENTARY INFORMATION:

Title: *Associated Form;* and *OMB Number:* Lock Performance Monitoring System (LPMS) Waterway Traffic Report; ENG FORM 3102C and 3102D; OMB Control Number 0710-0008.

Needs and Uses: The U.S. Army Corps of Engineers utilizes the data collected to monitor and analyze the use and operation of federally owned or operated locks. General data of vessel identification, tonnage, and commodities are supplied by the master of vessels and all locks owned and operated by the U.S. Army Corps of Engineers. The information is used for sizing and scheduling replacements, the timing of rehabilitation or maintenance actions, and the setting of operation procedures and closures for locks and canals.

Affected Public: Business or other for profit.

Annual Burden Hours: 26,312.
Number of Respondents: 6,529.
Responses per Respondent: 93.
Annual Responses: 607,197.
Average Burden per Response: 2.6 minutes.

Frequency: On occasion.

Respondents are vessel operators who provide the vessel identification, tonnage and community information as stipulated on ENG Form 3012C, Waterway Traffic Report—Vessel Log or ENG form 3102D, Waterway Traffic Report—Detail Vessel Log. The information is applied to navigation system management to identify and prioritize lock maintenance, rehabilitation, or replacement. It is also used to measure waterway performance and the level of service of the national waterway systems.

Dated: April 28, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017-08964 Filed 5-3-17; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD-2017-HA-0001]

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 June 5, 2017.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571-372-0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Researcher Responsibility Acknowledgment; OMB Control Number 0720-0042.

Type of Request: Reinstatement.
Number of Respondents: 89.
Responses per Respondent: 1.
Annual Responses: 89.
Average Burden per Response: 30 minutes.

Annual Burden Hours: 45.

Needs and Uses: The information collection requirement is necessary to document researcher's understanding and acceptance of the regulatory and ethical responsibilities pertaining to humans as subjects in research. Principal and associate investigators must have the proposed, signed form on

file before they may engage in research conducted or supported by entities under the purview of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)).

Affected Public: Federal Government; Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Stephanie Tatham.

Comments and recommendations on the proposed information collection should be emailed to Ms. Stephanie Tatham, 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: May 1, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017-09019 Filed 5-3-17; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Acquisition University Board of Visitors; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Acquisition Technology and Logistics, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Acquisition University Board of Visitors will take place.

DATES: Open to public Wednesday, May 17, 2017, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The address of the open meeting is Defense Acquisition University, 9820 Belvoir Road, Building 202, Command Conference Room, Fort Belvoir, Virginia 22060.

FOR FURTHER INFORMATION CONTACT: Caren Hergenroeder, (703) 805-5134 (Voice), (703) 805-5909 (Facsimile), caren.hergenroeder@dau.mil (Email). Mailing address is Protocol Director, DAU, 9820 Belvoir Rd., Fort Belvoir, VA 22060. Web site: <https://www.dau.mil/about/P/Board-of-Visitors>. The most up-to-date changes to the meeting agenda can be found on the Web site.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, Defense Acquisition University Board of Visitors is unable to provide public notification, as required by 41 CFR 102-3.150(a), for its meeting on May 17, 2017. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.140 and 102-3.150.

Purpose of the Meeting: The purpose of this meeting is to report back to the USD(AT&L) on continuing items of interest.

Agenda:

9:00 a.m. Welcome and Announcements
9:05 a.m. DAU Update
9:35 a.m. Strategic Planning
10:30 a.m. Board Presentations
12:00 p.m. Board Members Working Lunch
1:00 p.m. Current and Upcoming Initiatives
3:30 p.m. Summary Discussion
4:00 p.m. Adjourn

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public. However, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Caren Hergenroeder at 703-805-5134.

Written Statements: Pursuant to 41 CFR 102-3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Defense Acquisition University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Defense Acquisition University Board of Visitors.

All written statements shall be submitted to the Designated Federal Officer for the Defense Acquisition University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration.

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Defense Acquisition University Board of Visitors until its next meeting.

Committee's Designated Federal Officer or Point of Contact: Ms. Christen Goulding, 703-805-5412, christen.goulding@dau.mil.

Dated: May 1, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017-09008 Filed 5-3-17; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN-2015-0004]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the United States Marine Corps announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and

clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 3, 2017.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket 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.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Children, Youth and Teen Programs (CYTP), Marine and Family Programs Division (MFY-3), 3280 Russell Road, Marsh Center, Quantico, VA 22134, or call CYTP at 703-784-9553.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: USMC Children, Youth and Teen Programs (CYTP) Registration Packet; NAVMC 11720, NAVMC 1750/4, and NAVMC 1750/5; OMB Control Number 0703-XXXX.

Needs and Uses: The information collected on these forms is used by Marine Corps Family Care Programs (MFP) and Inclusion Action Team (IAT) professionals for purposes of patron registration, to determine the general health status of patrons participating in CYTP activities and if necessary the

appropriate accommodations for the patron for full enjoyment of CYTP services, and provides consent for information to be exchanged between MFP personnel and other designated individuals or organizations about a patron participating in MFP. These forms may potentially be completed by a member of the public. Collected information will be filed pursuant to the Privacy Act System of Records Notice NM01754-3.

NAVMC 1750/5 USMC Children, Youth & Teen Programs (CYTP) Registration Form

Annual Burden Hours: 56,000.

Number of Respondents: 112,000.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: Annually.

NAVMC 1750/4 USMC Children, Youth & Teen Programs (CYTP) Health Assessment and Health Screening Tool for Inclusion Action Team (IAT)

Annual Burden Hours: 56,000.

Number of Respondents: 112,000.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: Annually.

NAVMC 11720 USMC Family Care Programs—Consent to Release Information

Annual Burden Hours: 19,040.

Number of Respondents: 112,000.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: Annually.

Total

Affected Public: Individuals or Households.

Annual Burden Hours: 131,040.

Number of Respondents: 112,000.

Responses per Respondent: 1.

Annual Responses: 112,000.

Average Burden per Response: 70 minutes.

Frequency: Annually.

Respondents are MFP patrons who provide information to MFP and IAT personnel in order to allow the child to participate in CYTP activities, determine the general health status of patrons participating in CYTP activities, and if necessary, determine the appropriate accommodations for the patron for full enjoyment of CYTP services, and provide consent for information about the patron from other specified individuals and organizations. These forms provide CYTP personnel with demographic information and emergency contact information. It also

allows parents/guardians to provide consent for specific activities that may take place while participating in CYTP. Failure to provide information may limit MFP's ability to properly consider participants' health and special needs, adversely impact individuals from participation in CYTP activities, and will limit MFP's ability to communicate with organizations or individuals outside of DoD which may adversely affect available services. Having these forms is essential in providing the requested child care services and activities to all CYTP participants, and maintaining the continuity of care, safety and health of CYTP participants.

Dated: May 1, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017-09027 Filed 5-3-17; 8:45 am]

BILLING CODE 3810-FF-F

DEPARTMENT OF EDUCATION

[Docket No.: ED-2017-ICCD-0060]

Agency Information Collection Activities; Comment Request; Talent Search (TS) Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 3, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2017-ICCD-0060. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 224-84, Washington, DC 20202-4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Craig Pooler, 202-453-6195.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Talent Search (TS) Annual Performance Report.

OMB Control Number: 1840-0826.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 478.

Total Estimated Number of Annual Burden Hours: 8,604.

Abstract: Talent Search grantees must submit the report annually. The report provides the Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collection is also aggregated to provide information on project participants and program outcomes.

Dated: May 1, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017-08998 Filed 5-3-17; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Indian Education Discretionary Grants Programs—Native American Language (NAL@ED) Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2017 for Indian Education Discretionary Grants Programs—NAL@ED Program, Catalog of Federal Domestic Assistance (CFDA) Number 84.415B.

DATES:

Applications Available: May 4, 2017.
Deadline for Notice of Intent to Apply: June 8, 2017.

Deadline for Transmittal of Applications: June 19, 2017.

Deadline for Intergovernmental Review: August 17, 2017.

FOR FURTHER INFORMATION CONTACT: John Cheek, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W207, Washington, DC 20202-6335. Telephone: (202) 401-0274 or by email: john.cheek@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the NAL@ED program are to:

- (1) Support schools that use Native American and Alaska Native languages as the primary language of instruction;
- (2) Maintain, protect, and promote the rights and freedom of Native Americans and Alaska Natives to use, practice, maintain, and revitalize their languages, as envisioned in the Native American Languages Act of 1990 (25 U.S.C. 2901 *et seq.*); and
- (3) Support the Nation's First Peoples' efforts to maintain and revitalize their languages and cultures, and to improve educational opportunities and student outcomes within Native American and Alaska Native communities.

(3) Support the Nation's First Peoples' efforts to maintain and revitalize their languages and cultures, and to improve educational opportunities and student outcomes within Native American and Alaska Native communities.

Background

Section 6133 of the Elementary and Secondary Education Act (ESEA),¹ as amended by the Every Student Succeeds Act (ESSA), authorizes the NAL@ED program. The program provides discretionary grants to develop, maintain, improve, or expand programs that support elementary or secondary schools in using Native American and Alaska Native languages as the primary language of instruction. Section 6133 of the ESEA references the Native American Languages Act of 1990, in which Congress recognized the fundamental importance of preserving Native American languages. The Native American Languages Act of 1990 states that it is the policy of the United States to “preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages,” as well as “to encourage and support the use of Native American languages as a medium of instruction in order to encourage and support—

(A) Native American language survival,

(B) Educational opportunity,

(C) Increased student success and performance,

(D) Increased student awareness and knowledge of their culture and history, and

(E) Increased student and community pride.” (25 U.S.C. 2903.)

This Federal policy is supported by growing recognition of the importance of Native language use and preservation in facilitating educational success and other positive outcomes for Native students, including student well-being as reflected in the invitational priority for this competition.

The Native Language Shift and Retention study, funded through an Institute of Education Sciences grant, found that the majority of Native youth surveyed valued their Native language, viewed it as integral to their sense of self, wanted to learn it, and viewed it as a means of facilitating their success in school and life.² Collaborative efforts between educators, families, and communities, the study suggests, may be especially promising ways to ensure that all Native students have the critical opportunity to learn their Native language.

Indian students and tribal communities have made progress in

¹ Unless otherwise indicated, all references to the ESEA are to the ESEA, as amended by the ESSA.

² Romero-Little, M.E., McCarty, T.L., Warhol, L., and Zepeda, O. (2007). Language policies in practice: Preliminary findings from a large-scale study of Native American language shift. *TESOL Quarterly* 41:3, 607-618.

reinvigorating efforts to preserve and restore Native languages and culture; building tribal capacity to shape and engage in the education of Native students; and raising awareness about school climate issues that are often unique to Indian students and communities, including issues related to student mental health and educator cultural competency. This new NAL@ED program builds on these efforts. The U.S. Department of Education (Department) held tribal consultations on this new NAL@ED program in 2016. In addition to four tribal consultations conducted in Indian country, the Department also held two interactive consultation webinars, which were attended by tribal school educators, tribal officials, representatives of Native American organizations, and others to obtain feedback on specific questions relating to the design of the grant program.

We learned through the consultations that tribes and interested Native Americans are very enthusiastic about the opportunity that the NAL@ED program presents. Nearly half of webinar participants favored having the program focus on instruction in the Native language and professional development, while about one-fourth favored a priority for projects that develop assessments in the Native language. Webinar participants were also interested in supporting projects in a variety of school settings, e.g., public schools, Bureau of Indian Education (BIE)-funded schools, and tribally funded schools. The vast majority of participants favored allowing pre- and post-assessments of Native language proficiency to be in either oral or written format, and favored requiring a tribe as a partner in every project. Finally, webinar participants overwhelmingly supported the concept of long-term data collection in order to show the positive impact of instruction through Native languages.

The priorities and selection criteria for this competition reflect the input received through these tribal consultations. The absolute priorities reflect the input we received regarding the desire for diversity in the school settings for projects. The selection criteria reflect input regarding Native language instruction, professional development of staff, and long-term data collection.

Priorities: This competition contains two absolute priorities, two competitive preference priorities, and one invitational priority. We are establishing these priorities for the FY 2017 grant competition and any subsequent year in which we make awards from the list of

unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priority: For FY 2017 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of these priorities. Under this competition, each absolute priority constitutes its own funding category. The Secretary intends to award grants under each absolute priority for which applications of sufficient quality are submitted. Applicants must choose one of the two absolute priorities, and must clearly identify the specific absolute priority that the proposed project addresses.

These priorities are:

Absolute Priority 1.

Projects that will take place in one or more schools of a State-funded local educational agency (LEA), including a public charter school that is an LEA under State law, and that will support Native American or Alaska Native language education and development, as well as provide professional development for teachers and, as appropriate, staff and administrators, to strengthen the overall language and academic goals of the school that will be served by the project.

Absolute Priority 2.

Projects that will take place in one or more schools funded by the BIE, an Indian tribe, a tribal college or university (TCU), an Alaska Native Regional Corporation (as described in section 3(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(g))), or a private, tribal, or Alaska Native nonprofit organization, and that will support Native American or Alaska Native language education and development, as well as provide professional development for teachers and, as appropriate, staff and administrators, to strengthen the overall language and academic goals of the school(s) that will be served by the project.

Competitive Preference Priorities: For FY 2017 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award five points to an application that meets either of the priorities and 10 points to an application that meets both of these priorities.

These priorities are:

Competitive Preference Priority 1 (0 or 5 points).

We will award five points to an application for a project in which either the lead applicant or a partner receives, or is eligible to receive, a formula grant under title VI of the ESEA, and commits to use all or part of that formula grant to help sustain this project after conclusion of the grant period. To meet this priority, an applicant must include a statement that indicates the school year in which the entity will begin using title VI formula grant funds to help support this project; what percentage of the title VI grant will be used for this; and the timeline for obtaining parent committee input and approval of this action, if necessary.

Competitive Preference Priority 2 (0 or 5 points).

We will award five points to an application submitted by an Indian tribe, Indian organization, or TCU that is eligible to participate in the NAL@ED program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or TCU will also be considered eligible to receive preference under this priority. In order to be considered a consortium application, the application must include the consortium agreement, signed by all parties.

Invitational Priority: For FY 2017 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Projects that include a measure of student well-being, which may include mental health, as one of the project-specific objectives.

Waiver of Proposed Rulemaking:

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities, requirements, definitions, and selection criteria. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 6133 of the ESEA (20 U.S.C. 7453) and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public

comment on the priorities, requirements, definitions, and selection criteria under section 437(d)(1) of GEPA.

Application Requirements: (1)

General requirements. The following requirements apply to all applications submitted under this competition. An applicant must include in its application—

(a) A completed information form that includes:

(i) Instructional language. The name of the Native American or Alaska Native language to be used for instruction at the school(s) supported by the eligible entity.

(ii) Number of students. The number of students to be served by the project and the total number of students attending the school(s).

(iii) Grade level. Grade level(s) of targeted students in the proposed project.

(iv) Instructional hours. The number of hours of instruction per week in and through one or more Native American or Alaska Native languages currently being provided to targeted students at such school(s), if any.

(v) Pre- and post-assessments. Whether a pre- and post-assessment of Native language proficiency is available and, if not, whether grant funds will be used for developing such assessment.

(vi) Organizational information. For each school included in the project, information regarding the school's organizational governance or affiliations, specifically information about the school's governing entity (such as an LEA, tribal educational agency or department, charter organization, private organization, or other governing entity); the school's accreditation status; any partnerships with institutions of higher education; and any indigenous language schooling and research cooperatives.

(vii) Program description. A description of how the eligible entity will: Support Native language education and development, and provide professional development for staff, in order to strengthen the overall language and academic goals of the school(s) that will be served by the project; ensure the implementation of rigorous academic content that prepares all students for college and career; and ensure that students progress toward meeting high-level fluency goals in the Native language.

(b) An assurance that for each school to be included in the project—

(i) The school is engaged in meeting State or tribally designated long-term goals for students, as may be required by applicable Federal, State, or tribal law;

(ii) The school assesses students using the Native American or Alaska Native language of instruction, where possible;

(iii) The qualifications of all instructional and leadership personnel at such school are sufficient to deliver high-quality education through the Native American or Alaska Native language used in the school; and

(iv) The school will collect and report to the public data relative to student achievement and, if appropriate, rates of high school graduation, career readiness, and enrollment in postsecondary education or workforce development programs, of students who are enrolled in the school's programs.

(2) *Certification.* An applicant that is an LEA (including a public charter school that is an LEA), a school operated by the BIE, or a nontribal for-profit or nonprofit organization must submit a certification from an entity described in application requirement (2)(a), containing the assurances described in application requirement (2)(b).

(a) The certification must be from one of the following entities, on whose land the school or program is located, or that is an entity served by the school, or whose members (as defined by that entity) are served by the school:

(i) An Indian tribe or tribal organization.

(ii) A TCU.

(iii) An Alaska Native Regional Corporation or an Alaska Native nonprofit organization.

(iv) A Native Hawaiian organization.

(b) The certification must state that—

(i) The school or applicant organization has the capacity to provide education primarily through a Native American or an Alaska Native language; and

(ii) There are sufficient speakers of the target language at the school or available to be hired by the school or applicant organization.

(c) If the applicant is an LEA, the tribe also certifies that it has been consulted on the contents of this application as required under ESEA section 8538.

ISDEAA Statutory Hiring Preference

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (ISDEAA) (Pub. L. 93-638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as

defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of the ISDEAA statutory hiring preference only, an Indian is a member of any federally recognized Indian tribe.

Definitions: The following definitions apply to this competition. For the purposes of this competition, we establish the definitions for "elementary school," "Indian organization," "performance target," "secondary school," and "tribe," in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1). The definitions of "Native American" and "Native American language" are from sections 8101(34) and 6151(3) of the ESEA (20 U.S.C. 7801(34) and 7491(3)), and section 103 of the Native American Languages Act (25 U.S.C. 2902). The definition of "tribal college or university" is from section 6133 of the ESEA (20 U.S.C. 7453) and section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c). All other definitions are from 34 CFR 77.1.

Ambitious means promoting continued, meaningful improvement for program participants or for individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure.

Baseline means the starting point from which performance is measured and targets are set.

Elementary school means, for State-funded public schools, a day or residential school that provides elementary education, as determined under State law. The term means, for tribally controlled schools, a day or residential school that provides elementary education as determined under tribal law. The definition of "elementary school" may include pre-kindergarten if included in the State or tribal definition of elementary education.

Indian organization means an organization that—

(1) Is legally established—

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction of or by charter from the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

Native American means: (1) "Indian" as defined in section 6151(3) of the ESEA (20 U.S.C. 7491(3)), which includes individuals who are Alaska Natives and members of federally recognized or State recognized tribes; (2) Native Hawaiian; or (3) Native American Pacific Islander.

Native American language means the historical, traditional languages spoken by Native Americans.

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means the goal for the number and percentage of participants to meet each performance measure each period of the project and as a result of a project. The performance targets should increase for each project period with the goal that students progress toward high-level fluency in the Native language.

Secondary school means a day or residential school that provides secondary education as determined under State or tribal law.

Tribal college or university means an institution that—

(1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a note); or

(2) Is cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

Tribe means either a federally recognized tribe or a State-recognized tribe.

Program Authority: 20 U.S.C. 7453.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and

amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Further Continuing and Security Assistance Appropriations Act, 2017, would provide, on an annualized basis, \$5,554,421 for Indian Education National Activities, of which we would use an estimated \$1,100,000 for this NAL@ED competition.

The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2018 from the list of unfunded applications from this competition.

Estimated Range of Awards: \$125,000–\$300,000 per year.

Estimated Average Size of Awards: \$215,000 per year.

Maximum Award: We will reject any application that proposes a budget exceeding \$300,000 for a single budget period of 12 months.

Estimated Number of Awards: 4–8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants*: The following entities, either alone or in a consortium, that have a plan to develop and maintain, or to improve and expand, programs that support the entity's use of a Native American or Alaska Native language as the primary language of instruction in one or more elementary or secondary schools (or both) are eligible under this program:

(a) An Indian tribe.

(b) A TCU.

(c) A tribal educational agency.

(d) An LEA, including a public charter school that is an LEA under State law.

(e) A school operated by the BIE.

(f) An Alaska Native Regional Corporation, as described in section 3(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(g)).

(g) A tribal, Alaska Native, Native Hawaiian, or other nonprofit organization.

(h) A nontribal for-profit organization.

2. *Cost Sharing or Matching*: This program does not require cost sharing or matching.

3. *Other*: Projects funded under this competition are encouraged to budget for a two-day Project Directors' meeting in Washington, DC during each year of the project period.

IV. Application and Submission Information

1. *Address to Request Application Package*: You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: <http://www.ed.gov/fund/grant/apply/grantapps/index.html>. To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a TDD or a TTY, call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: www.EDPubs.gov or at its email address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.415B.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person listed under *Accessible Format* in section VII of this notice.

2. *Content and Form of Application Submission*: Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, we strongly encourage each potential applicant to notify us of the applicant's intent to submit an application by emailing OESE.NAL.ED2017@ed.gov with the subject line "Intent to Apply" and include in the content of the email the following information: (1) The applicant organization's name and address, and (2) the Native language on which the project would focus. Applicants that do not provide notice of their intent to apply may still submit an application.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to

evaluate your application. We recommend that you limit the application narrative to no more than 35 pages, using the following standards:

- A “page” is 8.5” × 11”, on one side only, with 1” margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The suggested page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, resumes, bibliography, or letters of support. However, the page limit does apply to all of the application narrative.

b. *Submission of Proprietary*

Information: Given the types of projects that may be proposed in applications for the NAL@ED program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define “business information” and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Consistent with the process followed from the Office of Indian Education discretionary grant competitions, we may post the project narrative section of funded NAL@ED program applications on the Department’s Web site so you may wish to request confidentiality of business information. Identifying proprietary information in the submitted application will help facilitate this public disclosure process.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under “Other Attachments Form,” please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Deadline for Notice of Intent to Apply: June 8, 2017.

Date of Pre-Application Meeting: We intend to hold webinars to provide

technical assistance to interested applicants. Detailed information regarding these meetings will be provided on the NAL@ED program Web site at <http://www2.ed.gov/about/offices/list/oese/oie/index.html>.

Deadline for Transmittal of Applications: June 19, 2017.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual’s application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 17, 2017.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* Not more than five percent of the funds provided to a grantee may be used for administrative costs (ESEA section 6133(g)). We reference regulations outlining other funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

- Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

- Register both your DUNS number and TIN with the System for Award Management (SAM), the Government’s primary registrant database;

- Provide your DUNS number and TIN on your application; and

- Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: <http://fedgov.dnb.com/webform>. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov*.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at www.SAM.gov. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: <http://www2.ed.gov/fund/grant/apply/sam-faqs.html>.

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: www.grants.gov/web/grants/register.html.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in

accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the NAL@ED program, CFDA number 84.415B, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for NAL@ED program at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.415 not 84.415B).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.

- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at www.G5.gov. In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* Web site at: www.grants.gov/web/grants/applicants/apply-for-grants.html.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- *You must submit all documents electronically, including all information you typically provide on the following forms:* The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must upload any narrative sections and all other attachments to your application as files in a read-only, flattened Portable Document Format (PDF), meaning any fillable PDF documents must be saved as flattened non-fillable files. Therefore, do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, flattened PDF (e.g., Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the application narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF. There is no need to password protect a file in order to meet the requirement to submit a read-only,

flattened PDF. And, as noted above, the Department will not review password-protected files.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1-800-518-4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following

business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m. Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the *Grants.gov* system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: John Cheek, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W207,

Washington, DC 20202. FAX: (202) 401–0274.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.415B), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.415B), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. Selection Criteria: For the purposes of this competition, we are establishing selection criteria, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1). We are also using selection criteria for this competition from 34 CFR 75.210. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Quality of the project design.* (Up to 15 Points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the project design will ensure that students progress toward high-level fluency goals in the Native language.

(3) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(4) The extent to which the project includes a plan for data collection and reporting to track long-term student academic and other outcomes after the project is complete.

(b) *Quality of project services.* (Up to 20 Points)

The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the following factors:

(1) The quality of the plan for supporting Native American or Alaska Native language education and development by providing instruction of or through the Native language. (Up to 7 points)

(2) The extent to which the project will provide professional development for teachers and, as appropriate, staff and administrators to strengthen the overall language proficiency and academic goals of the school(s) that will

be served by the project, including cultural competence training to all staff in the school(s). (Up to 6 points)

(3) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (Up to 4 points)

(4) The extent to which the percentage of the school(s) day that instruction will be provided in the Native language is ambitious and is reasonable for the grade level and population served. (Up to 3 points)

(c) *Quality of project personnel.* (Up to 10 Points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers the following factors:

(1) The extent to which teachers of the Native language are identified as staff for this project, have teaching experience, and are fluent in the Native language.

(2) The qualifications, including relevant training and experience, of key project personnel.

(3) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(d) *Adequacy of resources.* (Up to 20 Points)

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The extent to which the applicant or a partner has experience in operating a Native language program. (Up to 10 points)

(2) The extent to which the costs of the project are reasonable in relation to the objectives, design, and potential significance of the proposed project. (Up to 6 points)

(3) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support. (Up to 4 points)

(e) *Quality of the management plan.* (Up to 15 Points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed

project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(f) *Quality of the project evaluation.* (Up to 20 Points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which each proposed performance target is ambitious, yet achievable, compared to the baseline for each performance measure. (Up to 8 Points)

(2) The quality of the applicant's plan to collect and report reliable, valid, and meaningful performance data, including the applicant's capacity to collect such data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research. (Up to 7 Points)

(3) The extent to which the data collection and reporting methods the applicant would use to track long-term student academic outcomes after the project is complete are likely to yield reliable, valid, and meaningful performance data. (Up to 5 Points)

2. Review and Selection Process: We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(2)(3), the rank order of the applications, any information relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants, the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of

Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. Risk Assessment and Special Conditions: Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. Integrity and Performance System: If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

VI. Award Administration Information

1. Award Notices: If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. Administrative and National Policy Requirements: We identify administrative and national policy requirements in the application package and reference these and other

requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting*: (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

(c) Each grantee is required under section 6133 of the ESEA to submit annually to the Secretary information on the activities carried out with these grant funds, the number of children served by the project, and the number of instructional hours in the Native language.

(d) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures*: Under the Government Performance and Results Act (GPRA), Federal departments and agencies must clearly describe the goals and objectives of programs, identify resources and actions needed to accomplish goals and objectives, develop a means of measuring progress made, and regularly report on achievement. One important source of program information on successes and lessons learned is the project evaluation conducted under individual grants.

(a) *Measures*. The Department has identified the following GPRA performance measures for evaluating the overall effectiveness of the NAL@ED program:

Measure 1: The number and percentage of participating students

who attain proficiency in a Native language, as determined by each grantee through pre- and post-assessments of Native language proficiency.

Measure 2: The number and percentage of participating students who make progress in learning a Native language, as determined by each grantee through pre- and post-assessments of Native language proficiency.

Measure 3: The number and percentage of participating students who show an improvement in academic outcomes, as measured by academic assessments or other indicators.

Measure 4: The difference between the average daily attendance of participating students and the average daily attendance of all students in the comparison group (e.g., school, LEA, tribe, or other).

(b) *Baseline data*. Applicants must provide baseline data for each of the GPRA performance measures listed in paragraph (a) and include why each proposed baseline is valid; or, if the applicant has determined that there are no established baseline data for a particular performance measure, explain why there is no established baseline and explain how and when, during the project period, the applicant will establish a valid baseline for the performance measure.

(c) *Performance measure targets*. The applicant must propose in its application annual targets for the measures listed in paragraph (a). Applications must also include the following information as directed under 34 CFR 75.110(b) and (c):

(1) Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure.

(2) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data.

(3) The data collection and reporting methods the applicant would use after the project is complete to track long-term student academic outcomes, and why those methods are likely to yield reliable, valid, and meaningful performance data.

(4) The applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

Note: If the applicant does not have experience with collecting and reporting performance data through other projects or research, the applicant should provide other evidence of capacity to successfully carry out

data collection and reporting for its proposed project.

(d) *Performance reports*. All grantees must submit an annual performance report and final performance report with information that is responsive to these performance measures. The Department will consider this data in making annual continuation awards.

(e) *Department evaluations*. Consistent with 34 CFR 75.591, grantees funded under this program must comply with the requirements of any evaluation of the program conducted by the Department or an evaluator selected by the Department.

5. *Continuation Awards*: In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

Dated: May 1, 2017.

Jason Botel,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2017-09043 Filed 5-3-17; 8:45 am]

BILLING CODE 4000-01-P

EXPORT-IMPORT BANK OF THE UNITED STATES

Privacy Act System of Records Notice; EIB 2017-0002—Federal Personnel and Payroll System (FPPS)

ACTION: Notice of new electronic Privacy Act system of records. EIB 2017-0002—Federal Personnel and Payroll System (FPPS).

SUMMARY: The Export-Import Bank of the United States (EXIM Bank) proposes to add a new electronic system of records to coincide with migrating its personnel and payroll administration to the Department of Interior (DOI) Interior Business Center's (IBC) Federal Personnel and Payroll Systems (FPPS) and Time and Attendance system known as Quicktime, which are subject to the Privacy Act of 1974 (5 U.S.C. 522a), as amended. This notice is required to meet the requirements of the Privacy Act, which is to publish in the **Federal Register** a notice of the existence and character of records maintained by the agency (5 U.S.C. 522a(e)(4)). Included in this notice is the System of Records Notice (SORN) for FPPS and Quicktime. The system will be operational in the next 60 days. EXIM Bank will rescind current personnel and payroll Systems of Records Notices (SORN) as they cease being operational.

DATES: This action will be effective without further notice on June 4, 2017 unless comments are received that would result in a contrary determination.

ADDRESSES: Comments may be submitted electronically on www.regulations.gov or by mail to John Lowry, Director, IT Security Systems and Assurance, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION: The FPPS is an online personnel and payroll system providing support to Federal agency customers through DOI's IBC. FPPS is customized to meet customer needs for creating and generating the full life cycle of personnel transactions.

FPPS allows for immediate updates and edits of personnel and payroll data.

Bassam Doughman,

Agency Clearance Officer.

SYSTEM OF RECORDS NOTICE

EIB 2017-0002—Federal Personnel and Payroll System (FPPS).

SYSTEM IDENTIFIER:

EXIM/FPPS.

SYSTEM NAME:

EIB 2017-0002—Federal Personnel and Payroll System (FPPS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This electronic system will be used via a web interface by employees of the EXIM Bank through an electronic database managed by the DOI IBC in Denver, Colorado. FPPS customers will use a web-enabled interface, WebFPPS, to access FPPS through a web browser to perform personnel and payroll tasks. The FPPS functionality of certain applications are only accessible via the IBC or EXIM Bank intranets, and interconnections with the FPPS are outlined in the Interconnection Security Agreement and/or Memorandum of Understanding between EXIM Bank and IBC.

The system is located and managed at U.S. Department of the Interior, Interior Business Center, Human Resources and Payroll Services, 7301 W Mansfield Ave., MS D-2000, Denver, CO 80235.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

The FPPS system data contains Personally Identifiable Information (PII) on current and former EXIM Bank employees, including volunteers and emergency employees, and limited information regarding employee spouses, dependents, emergency contact, or in the case of an estate, a trustee.

CATEGORIES OF RECORDS IN THIS SYSTEM:

Name, Citizenship, Gender, Birth Date, Group Affiliation, Marital Status, Other Names Used, Truncated SSN, Legal Status, Place of Birth, Security Clearance, Spouse Information, Financial Information, Medical Information Disability Information, Education Information, Emergency Contact, Race/Ethnicity, Social Security Number (SSN), Personal Cell Telephone Number, Personal Email Address, Home Telephone Number, Employment Information, Military Status/Service Mailing/Home Address. Taxpayer

Identification Number; Bank Account Information such as Routing and Account Numbers; Beneficiary Information; Savings Bond Co-Owner Name(S) and Information; Family Member and Dependents Information; Professional Licensing and Credentials; Family Relationships; Age; Involuntary Debt (Garnishments or Child Support Payments); Court Order Information; Back Pay Information; User ID; Time and Attendance Data; Leave Time Information; Employee Common Identifier (ECI); Volunteer Emergency Contact Information; Person Number which is a unique number that identifies a person within FPPS; Person Number-Emergency which is a unique number identifying an individual within FPPS for a Leave Share Occurrence; and Person Number-Volunteer which is a unique number identifying an individual within the FPPS Volunteer Database.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

EXIM Bank is authorized to request this information pursuant to the following: The Export-Import Bank Act of 1945, as amended (12 U.S.C. 635 *et seq.*); 5 U.S.C. 5101, *et seq.*, 5501 *et seq.*, 5525 *et seq.*, and 6301 *et seq.*; 31 U.S.C. 3512; Executive Order 9397 as amended by Executive Order 13478, relating to Federal agency use of Social Security numbers. 31 U.S.C. 3512 *et seq.*; and 5 CFR part 293.

PURPOSE:

EXIM Bank proposes to add a new electronic system of records to coincide with its migration of personnel and payroll administration to the FPPS. FPPS is an online personnel and payroll system providing support to Federal agency customers through interagency agreement with the IBC. FPPS is customized to meet customer needs for creating and generating the full life cycle of personnel transactions. FPPS allows for immediate updates and edits of personnel and payroll data. FPPS also handles regulatory requirements such as specialized pay, garnishments, and special appointment programs. FPPS also operates in batch mode for performing close of business, payroll calculation, and other processes. FPPS customers can use a web-enabled interface, WebFPPS, to access FPPS through a web browser to perform personnel and payroll tasks. FPPS is a major application that consists of several minor applications to include time and attendance applications, a system for creating retirement cards and updating retirement records, a system for converting client data for integration into FPPS. The purpose of this system

is to ensure proper payment of salary and benefits to EXIM personnel, and to track time worked, leave, or other absences for reporting and compliance purposes. Use of this system will streamline EXIM Bank's personnel, payroll and other human resources functions into a unified, secure system, thereby improving employee input into these systems while enhancing data integrity and security and improving operational efficiency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures that are generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities determined to be relevant and necessary outside EXIM Bank as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

- a. EXIM Bank employees will have access to their own data.
- b. Data will be accessed by officials and employees of EXIM in the performance of their official duties, including, but not limited to, employees of the Division of Human Capital, Office of General Counsel, Office of the Chief Financial Officer and the Office of Inspector General.
- c. EXIM Bank is sharing this data with IBC as the service provider for FPPS.
- d. FPPS data is shared and reported to other Federal agencies, including the Department of the Treasury and the Office of Personnel Management, as required for human resources, payroll, and tax purposes.
- e. FPPS data may be shared with other Federal agencies pursuant to applicable law.
- f. FPPS data may be shared with the Department of Justice in the event information is required for litigation or law enforcement purposes and to any administrative State or Federal court in a relevant litigation matter (subject to appropriate process).
- g. To provide information to a Congressional Office from the record of an individual in response to an inquiry from that Office;
- h. For investigations of potential violations of law;
- i. By National Archives and Records Administration for record management inspections in its role as Archivist;
- j. For data breach and mitigation response.
- k. Disclosure to consumer reporting agencies:
Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made

from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

STORAGE:

Data will be stored electronically by IBC. Data is protected by the following electronic security systems: Password, Firewall, Encryption, User ID, Intrusion Detection System, Virtual Private Network (VPN), Public Key Infrastructure (PKI) Certificates, Personal Identity Verification (PIV) Card.

RETRIEVABILITY:

FPPS authorized users, including EXIM authorized Human Capital personnel, may retrieve information on an individual using full name, SSN and Employee Common Identifier (ECI). Certain personnel within EXIM and IBC, involved in operations and maintenance of FPPS payroll operations, can retrieve information on an individual using:

- ECI—unique number identifying employees across Federal automated systems.
- SSN and full name.
- Person Number—unique number which identifies a person within FPPS.
- Person Number-Emergency—unique number identifying an individual within FPPS for a leave share occurrence.
- Person Number-Volunteer—unique number identifying an individual within the FPPS volunteer database.
- Taxpayer Identification Number (TIN)—unique number identifying a trustee for the estate of a deceased employee.

Additionally, reports can be produced on an individual containing many of the data elements in FPPS. FPPS also routinely generates a variety of reports related to employment that are required by law, such as Internal Revenue Service (IRS) forms (1099-MISC and W-2); reports of withholdings and contributions for benefits and union dues; and reports on individuals who are delinquent on child-support payments. Access to the reports is limited to employees who process or file the reports and individuals who are granted access on a need-to-know basis. Copies of the reports may also be provided to government entities as required by law, such as tax forms to the IRS.

SAFEGUARDS:

Information about individuals whose data is in FPPS cannot be retrieved without knowing specific information about the employee. FPPS supports a

full suite of human resources functions, including calculating payroll. The data in FPPS is necessary to perform those functions and to comply with related Federal laws and regulations. To prevent misuse, (e.g., unauthorized browsing) EXIM Bank signed a Service Level Agreement (SLA) with the IBC to clearly establish and document IBC and client security roles and responsibilities. Most of the employee data in FPPS is collected from individuals and entered into FPPS by an authorized Federal human resources professional with access to the system.

The FPPS system has undergone a formal Security Authorization and Accreditation and has been granted an authority to operate by DOI in accordance with FISMA and NIST standards. FPPS is rated as FISMA moderate based upon the type of data, and it requires strict security and privacy controls to protect the confidentiality, integrity, and availability of the sensitive PII contained in the system.

RETENTION AND DISPOSAL:

Both EXIM Bank and IBC maintain records as needed under NARA approved records schedules for the retention of reports and data. Specifically, General Records Schedule (GRS) 1, "Civilian Personnel Records" and GRS 2 "Payrolling and Pay Administration Records," would be applicable to the FPPS system.

EXIM Bank is responsible for purging employee data according to the records schedule after an employee's access authority is terminated or the employee retires, changes jobs, or dies. The IBC may purge or delete any customer payroll or personnel records if it is agreed upon in the Inter-Agency Agreement with the IBC.

SYSTEM MANAGER AND ADDRESS:

Chief Human Capital Officer, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

NOTIFICATION AND RECORD ACCESS PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them may do so by accessing EXIM Bank's Web page: <http://www.exim.gov/about/freedom-information-act/privacy-act-requests>.

By email to foia@exim.gov or by U.S. mail to: "PRIVACY ACT REQUEST", Freedom of Information and Privacy Office, 811 Vermont Avenue NW., Washington, DC 20571.

The request must include a return address that identifies individual's street name/number and must (1)

include verification of identity attesting that the requesting individual is the record's subject (or his/her legal guardian) or a notarized consent form from the record's subject; and (2) clearly identifies the particular record(s). Record(s) at issue must be described in sufficient detail to enable EXIM Bank staff to conduct a search for the requested records.

CONTESTING OR AMENDING RECORD PROCEDURES:

Individuals wishing to contest records or to make an amendment of records about them may do so by accessing EXIM Bank's Web page: <http://www.exim.gov/about/freedom-information-act/privacy-act-requests>.

By email to foia@exim.gov or by U.S. mail to: "PRIVACY ACT REQUEST", Freedom of Information and Privacy Office, 811 Vermont Avenue NW., Washington, DC 20571.

The procedures for requesting amendment are to submit the request in writing; including a description of the information to be amended; reason for amendment; type of amendment sought and copies of available evidence supporting the request.

RECORD SOURCE CATEGORIES:

Sources of information are generated through employee resources and obtained using one of three methods: Manual entry, direct database connection to supply the required information, and through consumption of source flat files imported using PL/SQL procedural upload to the FPPS database.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

Kita L. Hall,
Program Specialist, Office of the General Counsel.

[FR Doc. 2017-08995 Filed 5-3-17; 8:45 am]

BILLING CODE 6690-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0185]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as

required by the Paperwork Reduction Act (PRA) of 1995, 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 July 3, 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: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize

the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060-0185.

Title: Section 73.3613, Filing of Contracts.

Form Number: N/A.

Type of Review: Extension of a currently collection.

Respondents: Business or other for profit entities; not-for-profit institutions.

Number of Respondents and Responses: 2,400 respondents and 2,400 responses.

Estimated Time per Response: 0.25 to 0.5 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Third party disclosure requirement.

Total Annual Burden: 975 hours.

Total Annual Cost: \$135,000.

Privacy Act Impact Assessment: No impact(s).

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collections is contained in Section 154(i) and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Needs and Uses: The information collection contained in 47 CFR 73.3613 currently requires each licensee or permittee of a commercial or noncommercial AM, FM, TV or International broadcast station shall file with the FCC copies of the following contracts, instruments, and documents together with amendments, supplements, and cancellations (with the substance of oral contracts reported in writing), within 30 days of execution thereof:

(a) *Network service:* Network affiliation contracts between stations and networks will be reduced to writing and filed as follows:

(1) All network affiliation contracts, agreements, or understandings between a TV broadcast or low power TV station and a national network. For the purposes of this paragraph the term network means any person, entity, or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states; and/or any person, entity, or corporation controlling, controlled by, or under common control with such person, entity, or corporation.

(2) Each such filing on or after May 1, 1969, initially shall consist of a written instrument containing all of the terms and conditions of such contract, agreement or understanding without reference to any other paper or document by incorporation or otherwise. Subsequent filings may simply set forth renewal, amendment or change, as the case may be, of a particular contract previously filed in accordance herewith.

(3) The FCC shall also be notified of the cancellation or termination of network affiliations, contracts for which are required to be filed by this section.

(b) *Ownership or control*: Contracts, instruments or documents relating to the present or future ownership or control of the licensee or permittee or of the licensee's or permittee's stock, rights or interests therein, or relating to changes in such ownership or control shall include but are not limited to the following:

(1) Articles of partnership, association, and incorporation, and changes in such instruments;

(2) Bylaws, and any instruments effecting changes in such bylaws;

(3) Any agreement, document or instrument providing for the assignment of a license or permit, or affecting, directly or indirectly, the ownership or voting rights of the licensee's or permittee's stock (common or preferred, voting or nonvoting), such as:

(i) Agreements for transfer of stock;

(ii) Instruments for the issuance of new stock; or

(iii) Agreements for the acquisition of licensee's or permittee's stock by the issuing licensee or permittee corporation. Pledges, trust agreements, options to purchase stock and other executory agreements are required to be filed. However, trust agreements or abstracts thereof are not required to be filed, unless requested specifically by the FCC. Should the FCC request an abstract of the trust agreement in lieu of the trust agreement, the licensee or permittee will submit the following information concerning the trust:

(A) Name of trust;

(B) Duration of trust;

(C) Number of shares of stock owned;

(D) Name of beneficial owner of stock;

(E) Name of record owner of stock;

(F) Name of the party or parties who have the power to vote or control the vote of the shares; and

(G) Any conditions on the powers of voting the stock or any unusual characteristics of the trust.

(4) Proxies with respect to the licensee's or permittee's stock running for a period in excess of 1 year, and all proxies, whether or not running for a

period of 1 year, given without full and detailed instructions binding the nominee to act in a specified manner. With respect to proxies given without full and detailed instructions, a statement showing the number of such proxies, by whom given and received, and the percentage of outstanding stock represented by each proxy shall be submitted by the licensee or permittee within 30 days after the stockholders' meeting in which the stock covered by such proxies has been voted. However, when the licensee or permittee is a corporation having more than 50 stockholders, such complete information need be filed only with respect to proxies given by stockholders who are officers or directors, or who have 1% or more of the corporation's voting stock. When the licensee or permittee is a corporation having more than 50 stockholders and the stockholders giving the proxies are not officers or directors or do not hold 1% or more of the corporation's stock, the only information required to be filed is the name of any person voting 1% or more of the stock by proxy, the number of shares voted by proxy by such person, and the total number of shares voted at the particular stockholders' meeting in which the shares were voted by proxy.

(5) Mortgage or loan agreements containing provisions restricting the licensee's or permittee's freedom of operation, such as those affecting voting rights, specifying or limiting the amount of dividends payable, the purchase of new equipment, or the maintenance of current assets.

(6) Any agreement reflecting a change in the officers, directors or stockholders of a corporation, other than the licensee or permittee, having an interest, direct or indirect, in the licensee or permittee as specified by § 73.3615.

(7) Agreements providing for the assignment of a license or permit or agreements for the transfer of stock filed in accordance with FCC application Forms 314, 315, 316 need not be resubmitted pursuant to the terms of this rule provision.

(c) *Personnel*: (1) Management consultant agreements with independent contractors; contracts relating to the utilization in a management capacity of any person other than an officer, director, or regular employee of the licensee or permittee; station management contracts with any persons, whether or not officers, directors, or regular employees, which provide for both a percentage of profits and a sharing in losses; or any similar agreements.

(2) *The following contracts, agreements, or understandings need not be filed*: Agreements with persons regularly employed as general or station managers or salesmen; contracts with program managers or program personnel; contracts with attorneys, accountants or consulting radio engineers; contracts with performers; contracts with station representatives; contracts with labor unions; or any similar agreements.

(d)(1) *Time brokerage agreements (also known as local marketing agreements)*: Time brokerage agreements involving radio stations where the licensee (including all parties under common ownership) is the brokering entity, the brokering and brokered stations are both in the same market as defined in the local radio multiple ownership rule contained in § 73.3555(a), and more than 15 percent of the time of the brokered station, on a weekly basis is brokered by that licensee; time brokerage agreements involving television stations where the licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both licensed to the same market as defined in the local television multiple ownership rule contained in § 73.3555(b), and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee; time brokerage agreements involving radio or television stations that would be attributable to the licensee under § 73.3555 Note 2, paragraph (i). Confidential or proprietary information may be redacted where appropriate but such information shall be made available for inspection upon request by the FCC.

(d)(2) *Joint sales agreements*: Joint sales agreements involving radio stations where the licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both in the same market as defined in the local radio multiple ownership rule contained in § 73.3555(a), and more than 15 percent of the advertising time of the brokered station on a weekly basis is brokered by that licensee; joint sales agreements involving television stations where the licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both in the same market as defined in the local television multiple ownership rule contained in § 73.3555(b), and more than 15 percent of the advertising time of the brokered station on a weekly basis is brokered by that licensee. Confidential or proprietary information may be redacted where appropriate but such

information shall be made available for inspection upon request by the FCC.

(e) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC; subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the television vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017-08955 Filed 5-3-17; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 17-400]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date, time, and agenda of its Consumer Advisory Committee (hereinafter the "Committee"). The mission of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including underserved populations, such as Native Americans, persons living in rural areas, older persons, people with disabilities, and persons for whom English is not their primary language) in proceedings before the Commission.

DATES: May 19, 2017, 11:00 a.m. to 2:00 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Commission Meeting Room TW-C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer and Governmental Affairs Bureau, (202) 418-2809 (voice or Relay), or email Scott.Marshall@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's

document DA 17-400, released April 27, 2017, announcing the Agenda, Date, and Time of the Committee's Next Meeting.

Meeting Agenda

At its May 19, 2017 meeting, it is anticipated that the Committee will consider a recommendation from its Robocalls Working Group regarding the Commission's Notice of Proposed Rulemaking and Notice of Inquiry on unwanted robocalls, released March 23, 2017. It is expected that the Committee will also receive presentations by FCC staff and outside speakers on matters of interest to the Committee. A limited amount of time will be available on the agenda for comments from the public.

If time permits, the public may ask questions of presenters via the email address livequestions@fcc.gov or via Twitter using the hashtag #fcclive. In addition, the public may also follow the meeting on Twitter @fcc or via the Commission's Facebook page at www.facebook.com/fcc. Alternatively, members of the public may send written comments to: Scott Marshall, Designated Federal Officer of the Committee at the address provided below.

The meeting is open to the public, and the site is fully accessible to people using wheelchairs or other mobility aids. Reasonable accommodations for people with disabilities, such as sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may not be possible to fill. To request an accommodation, send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Federal Communications Commission.

D'wana R. Terry,

Acting Deputy Bureau Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2017-08969 Filed 5-3-17; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1174]

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 July 3, 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: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal

Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060-1174.

Title: Section 73.503, Licensing requirements and service; Section 73.621, Noncommercial educational TV stations; Section 73.3527, Local public inspection file of noncommercial educational stations.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 2,200 respondents; 33,000 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority which covers these information collections is contained in 47 U.S.C. 151, 154(i), 303, and 399B.

Total Annual Burden: 16,500 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: Although the Commission does not believe that any confidential information will need to be disclosed in order to comply with the information collection requirements, applicants are free to request that materials or information submitted to the Commission be withheld from public inspection. (See 47 CFR 0.459 of the Commission's Rules).

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 20, 2017, the Commission adopted a *Report and Order* in MB Docket No. 12-106, FCC 17-41, *In the Matter of Noncommercial Educational Station Fundraising for*

Third-Party Non-Profit Organizations. Under the Commission's existing rules, a noncommercial educational (NCE) broadcast station may not conduct fundraising activities to benefit any entity besides the station itself if the activities would substantially alter or suspend regular programming. The *Report and Order* relaxes the rules to allow NCE stations to spend up to one percent of their total annual airtime conducting on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations. The *Report and Order* imposes the following information collection requirements on NCE stations:

Audience disclosure: The information collection requirements contained in 47 CFR 73.503(e)(1) requires that a noncommercial educational FM broadcast station that interrupts regular programming to conduct fundraising activities on behalf of third-party non-profit organizations must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising. The information collection requirements contained in 47 CFR 73.621(f)(1) requires that a noncommercial educational TV broadcast station that interrupts regular programming to conduct fundraising activities on behalf of third-party non-profit organizations must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising. The audience disclosure must be aired at the beginning and the end of each fundraising program and at least once during each hour in which the program is on the air.

Retention of information on fundraising activities in local public inspection file: The information collection requirements contained in 47 CFR 73.3527(e)(14) requires that each noncommercial educational FM broadcast station and noncommercial educational TV broadcast station that interrupts regular programming to conduct fundraising activities on behalf of a third-party non-profit organization must place in its local public inspection file, on a quarterly basis, the following information for each third-party fundraising program or activity: The date, time, and duration of the fundraiser; the type of fundraising activity; the name of the non-profit organization benefitted by the fundraiser; a brief description of the specific cause or project, if any, supported by the fundraiser; and, to the

extent that the station participated in tallying or receiving any funds for the non-profit group, an approximation, to the nearest \$10,000, of the total funds raised. The information for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October-December, April 10 for the quarter January-March, etc.).

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017-08967 Filed 5-3-17; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0548, 3060-0652, 3060-0750, 3060-0849, 3060-0967 and 3060-0994]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. 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 Commission 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 PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before June 5, 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 contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email Nicholas.A.Fraser@omb.eop.gov; and to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418-2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. 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.

OMB Control Number: 3060-0548.

Title: Section 76.1708, Principal Headend; Sections 76.1709 and 76.1620, Availability of Signals; Section 76.56, Signal Carriage Obligations; Section 76.1614, Identification of Must-Carry Signals.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 5,100 respondents; 61,200 responses.

Estimated Time per Response: 0.5-1 hour.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 614 and 615 of the Communications Act of 1934, as amended.

Total Annual Burden: 30,600 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained in the collection are covered under the following rule sections:

47 CFR 76.56 requires cable television systems to carry signals of all qualified local Noncommercial Educational (NCE) sting carriage. As a result of this requirement, the following information collection requirements are needed for this collection:

47 CFR 76.1708 requires that the operator of every cable television system shall maintain for public inspection the designation and location of its principal headend. If an operator changes the designation of its principal headend, that new designation must be included in its public file.

47 CFR 76.1709(a) states effective June 17, 1993, the operator of every cable television system shall maintain for public inspection a file containing a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements pursuant to 47 CFR 76.56. Such list shall include the call sign; community of license, broadcast channel number, cable channel number, and in the case of a noncommercial educational broadcast station, whether that station was carried by the cable system on March 29, 1990.

47 CFR 76.1614 and 1709(c) states that a cable operator shall respond in writing within 30 days to any written

request by any person for the identification of the signals carried on its system in fulfillment of the requirements of 47 CFR 76.56.

47 CFR 76.1620 states that if a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers. Such notification must be provided by June 2, 1993, and annually thereafter and to each new subscriber upon initial installation. The notice, which may be included in routine billing statements, shall identify the signals that are unavailable without an additional connection, the manner for obtaining such additional connection and instructions for installation.

OMB Control Number: 3060-0652.

Title: Section 76.309, Customer Service Obligations; Section 76.1602, Customer Service-General Information, Section 76.1603, Customer Service-Rate and Service Changes and Section 76.1619, Information and Subscriber Bills.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 8,260 respondents; 1,117,540 responses.

Estimated Time per Response: 0.0167 to 1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 50,090 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission released on October 14, 2010, a Third Report and Order and Order on Reconsideration, FCC 10-181, CS Docket 97-80 and PP Docket 00-67, modifying the Commission's rules to

implement Section 629 of the Communications Act (Section 304 of the Telecommunications Act of 1996). Section 629 of the Communications Act directs the Commission to adopt rules to assure the commercial availability of "navigation devices," such as cable set-top boxes. One rule modification in the Third Report and Order and Order on Reconsideration is intended to prohibit price discrimination against retail devices. This modification requires cable operators to disclose annually the fees for rental of navigation devices and single and additional CableCARDS as well as the fees reasonably allocable to the rental of single and additional CableCARDS and the rental of operator-supplied navigation devices if those devices are included in the price of a bundled offer.

OMB Control Number: 3060-0750.

Title: 47 CFR 73.671, Educational and Informational Programming for Children; 47 CFR 73.673, Public Information Initiatives Regarding Educational and Informational Programming for Children.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,195 respondents; 3,996 responses.

Estimated Time per Response: 1 to 5 minutes.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 29,131 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained in 47 CFR 73.671(c)(5) states that a core educational television program must be identified as specifically designed to educate and inform children by the display on the television screen throughout the program of the symbol E/I.

The information collection requirements contained in 47 CFR 73.673 states each commercial television broadcast station licensee must provide information identifying programming specifically designed to

educate and inform children to publishers of program guides. Such information must include an indication of the age group for which the program is intended.

These requirements are intended to provide greater clarity about broadcasters' obligations under the Children's Television Act (CTA) of 1990 to air programming "specifically designed" to serve the educational and informational needs of children and to improve public access to information about the availability of these programs. These requirements provide better information to the public about the shows broadcasters' air to satisfy their obligation to provide educational and informational programming under the CTA.

OMB Control Number: 3060-0849.

Title: Commercial Availability of Navigation Devices.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 962 respondents; 65,252 responses.

Estimated Time per Response: 0.00278 hours-40 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement; Annual reporting requirement; Semi-annual reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority is contained in Sections 4(i), 303(r) and 629 of the Communications Act of 1934, as amended.

Total Annual Burden: 15,921 hours.

Total Annual Cost: \$2,990.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained in the collection are as follows:

47 CFR 15.123(c)(3) states subsequent to the testing of its initial unidirectional digital cable product model, a manufacturer or importer is not required to have other models of unidirectional digital cable products tested at a qualified test facility for compliance with the procedures of Uni-Dir-PICS-I01-030903: "Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma" (incorporated by reference, see § 15.38) unless the first model tested was not a television, in which event the first television shall be tested as

provided in § 15.123(c)(1). The manufacturer or importer shall ensure that all subsequent models of unidirectional digital cable products comply with the procedures in the Uni-Dir-PICS-I01-030903: "Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma" (incorporated by reference, see § 15.38) and all other applicable rules and standards. The manufacturer or importer shall maintain records indicating such compliance in accordance with the verification procedure requirements in part 2, subpart J of this chapter. The manufacturer or importer shall further submit documentation verifying compliance with the procedures in the Uni-Dir-PICS-I01-030903: "Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma" (incorporated by reference, see § 15.38) to the testing laboratory representing cable television system operators serving a majority of the cable television subscribers in the United States.

47 CFR 15.123(c)(5)(iii) states subsequent to the successful testing of its initial M-UDCP, a manufacturer or importer is not required to have other M-UDCP models tested at a qualified test facility for compliance with M-Host UNI-DIR-PICS-IOI-061101 (incorporated by reference, see § 15.38) unless the first model tested was not a television, in which event the first television shall be tested as provided in § 15.123(c)(5)(i). The manufacturer or importer shall ensure that all subsequent models of M-UDCPs comply with M-Host UNI-DIR-PICS-IOI-061101 (incorporated by reference, see § 15.38) and all other applicable rules and standards. The manufacturer or importer shall maintain records indicating such compliance in accordance with the verification procedure requirements in part 2, subpart J of this chapter. For each M-UDCP model, the manufacturer or importer shall further submit documentation verifying compliance with M-Host UNI-DIR-PICS-IOI-061101 to the testing laboratory representing cable television system operators serving a majority of the cable television subscribers in the United States.

47 CFR 76.1203 provides that a multichannel video programming distributor may restrict the attachment or use of navigation devices with its system in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices that assist or are intended or designed to assist in the unauthorized receipt of service. Such restrictions may be

accomplished by publishing and providing to subscribers standards and descriptions of devices that may not be used with or attached to its system. Such standards shall foreclose the attachment or use only of such devices as raise reasonable and legitimate concerns of electronic or physical harm or theft of service.

47 CFR 76.1205(a) states that technical information concerning interface parameters which are needed to permit navigation devices to operate with multichannel video programming systems shall be provided by the system operator upon request.

47 CFR 76.1205(b)(1) states a multichannel video programming provider that is subject to the requirements of Section 76.1204(a)(1) must provide the means to allow subscribers to self-install the CableCARD in a CableCARD-reliant device purchased at retail and inform a subscriber of this option when the subscriber requests a CableCARD. This requirement shall be effective August 1, 2011, if the MVPD allows its subscribers to self-install any cable modems or operator-leased set-top boxes and November 1, 2011 if the MVPD does not allow its subscribers to self-install any cable modems or operator-leased set-top boxes.

47 CFR 76.1205(b)(1)(A) states that this requirement shall not apply to cases in which neither the manufacturer nor the vendor of the CableCARD-reliant device furnishes to purchasers appropriate instructions for self-installation of a CableCARD, and a manned toll-free telephone number to answer consumer questions regarding CableCARD installation but only for so long as such instructions are not furnished and the call center is not offered.

The requirements contained in Section 76.1205 are intended to ensure that consumers are able to install CableCARDS in the devices they purchase because we have determined this is essential to a functioning retail market.

47 CFR 76.1205(b)(2) states effective August 1, 2011, provide multi-stream CableCARDS to subscribers, unless the subscriber requests a single-stream CableCARD. This requirement will ensure that consumers have access to CableCARDS that are compatible with their retail devices, and can request such devices from their cable operators.

47 CFR 76.1205(b)(5) requires to separately disclose to consumers in a conspicuous manner with written information provided to customers in accordance with Section 76.1602, with written or oral information at consumer

request, and on Web sites or billing inserts. This requirement is intended to ensure that consumers understand that retail options are available and that cable operators are not subsidizing their own devices with service fees in violation of Section 629 of the Act.

47 CFR 76.1207 states that the Commission may waive a regulation related to Subpart P ("Competitive Availability of Navigation Devices") for a limited time, upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider that such a waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Such waiver requests are to be made pursuant to 47 CFR 76.7.

47 CFR 76.1208 states that any interested party may file a petition to the Commission for a determination to provide for a sunset of the navigation devices regulations on the basis that (1) the market for multichannel video distributors is fully competitive; (2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and (3) elimination of the regulations would promote competition and the public interest.

47 CFR 15.118(a) and 47 CFR 15.19(d) (label and information disclosure)—The U.S. Bureau of the Census reports that, at the end of 2002, there were 571 U.S. establishments that manufacture audio and visual equipment. These manufacturers already have in place mechanisms for labeling equipment and including consumer disclosures in the form of owners' manuals and brochures in equipment packaging. The Commission estimate that manufacturers who voluntarily decide to label their equipment will need no more than 5 hours to develop a label or to develop wording for a consumer disclosure for owners' manuals/brochures to be included with the device. Once developed, we do not anticipate any ongoing burden associated with the revision/modification of the label, if used, or the disclosure.

Status Reports—Periodic reports are required from large cable multiple system operators detailing CableCARD deployment/support for navigation devices. (This requirement is specified in FCC 05–76, CS Docket No. 97–80).

OMB Control No.: 3060–0967.

Title: Section 79.2, Accessibility of Programming Providing Emergency Information, and Emergency Information; Section 79.105, Video Description and Emergency Information Accessibility Requirements for All Apparatus; Section 79.106, Video Description and Emergency Information Accessibility Requirements for Recording Devices.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; and State, local, or tribal governments.

Number of Respondents and Responses: 61 respondents; 161 responses.

Estimated Time per Response: 0.5 to 5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation To Respond: Voluntary. The statutory authority for the collection is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617.

Total Annual Burden: 175 hours.

Annual Cost Burden: \$15,300.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, "Informal Complaints, Inquiries, and Requests for Dispute Assistance," which became effective on September 24, 2014. The Commission believes that it provides sufficient safeguards to protect the privacy of individuals who file complaints alleging violations of the Commission's televised emergency information rules, 47 CFR 79.2, and complaints alleging violations of the apparatus emergency information and video description requirements, 47 CFR 79.105–79.106.

Privacy Act Impact Assessment: The Privacy Impact Assessment (PIA) for Informal Complaints, Inquiries, and Requests for Dispute Assistance was completed on June 28, 2007. It may be reviewed at <http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html>. The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: In 2000, the Commission adopted rules to require video programming distributors (VPDs) to make emergency information provided in the audio portion of the programming accessible to viewers who have hearing disabilities. Second Report and Order, MM Docket No. 95–176, FCC 00–136. Later that year, to ensure that televised emergency information is accessible to viewers who are blind or visually impaired, the Commission modified its rules to require VPDs to make emergency information audible when provided in the video portion of a regularly scheduled newscast or a newscast that interrupts regular programming, and to provide an aural tone when emergency information is provided visually during regular programming (e.g., through screen crawls or scrolls). Report and Order, MM Docket No. 99–339, FCC 00–258.

In 2013, the Commission adopted rules related to accessible emergency information and apparatus requirements for emergency information and video description. Report and Order and Further Notice of Proposed Rulemaking, MB Docket Nos. 12–107 and 11–43, FCC 13–45. Specifically, the Commission's rules require that VPDs and video programming providers (VPPs) (including program owners) make emergency information accessible to individuals who are blind or visually impaired by using a secondary audio stream to convey televised emergency information aurally, when such information is conveyed visually during programming other than newscasts. The Commission's rules also require certain apparatus that receive, play back, or record video programming to make available video description services and accessible emergency information.

Finally, in 2015, the Commission adopted rules to require the following: (1) Apparatus manufacturers must provide a mechanism that is simple and easy to use for activating the secondary audio stream to access audible emergency information; and (2) starting no later than July 10, 2017, multichannel video programming distributors (MVPDs) must pass through the secondary audio stream containing audible emergency information when it is provided on linear programming accessed on second screen devices (e.g., tablets, smartphones, laptops and similar devices) over their networks as part of their MVPD services. Second Report and Order and Second Further Notice of Proposed Rulemaking, MB Docket No. 12–107, FCC 15–56.

These rules are codified at 47 CFR 79.2, 79.105, and 79.106.

Information Collection Requirements

(a) Complaints alleging violations of the emergency information rules.

Section 79.2(c) of the Commission's rules provides that a complaint alleging a violation of § 79.2 of its rules, may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter, facsimile transmission, telephone (voice/TRS/TTY), Internet email, audio-cassette recording, Braille, or some other method that would best accommodate the complainant's disability. After the Commission receives the complaint, the Commission notifies the VPD or VPP of the complaint, and the VPD or VPP has 30 days to reply.

(b) Complaints alleging violations of the apparatus emergency information and video description requirements.

Complaints alleging violations of the rules containing apparatus emergency information and video description requirements, 47 CFR 79.105–79.106, may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter in writing or Braille, facsimile transmission, telephone (voice/TRS/TTY), email, or some other method that would best accommodate the complainant's disability. Given that the population intended to benefit from the rules adopted will be blind or visually impaired, if a complainant calls the Commission for assistance in preparing a complaint, Commission staff will document the complaint in writing for the consumer. The Commission will forward such complaints, as appropriate, to the named manufacturer or provider for its response, as well as to any other entity that Commission staff determines may be involved, and may request additional information from any relevant parties when, in the estimation of Commission staff, such information is needed to investigate the complaint or adjudicate potential violations of Commission rules.

(c) Requests for Commission determination of technical feasibility of emergency information and video description apparatus requirements.

The requirements pertaining to apparatus designed to receive or play back video programming apply only to the extent they are “technically feasible.” Parties may raise technical infeasibility as a defense when faced with a complaint alleging a violation of the apparatus requirements or they may file a request for a ruling under

section 1.41 of the Commission's rules as to technical infeasibility before manufacturing or importing the product.

(d) Requests for Commission determination of achievability of emergency information and video description apparatus requirements.

The requirements pertaining to certain apparatus designed to receive, play back, or record video programming apply only to the extent they are achievable. Manufacturers of apparatus that use a picture screen of less than 13 inches in size and of recording devices may petition the Commission, pursuant to 47 CFR 1.41, for a full or partial exemption from the video description and emergency information requirements before manufacturing or importing the apparatus. Alternatively, manufacturers may assert that a particular apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable. A petition for exemption or a response to a complaint must be supported with sufficient evidence to demonstrate that compliance with the requirements is not achievable (meaning with reasonable effort or expense), and the Commission will consider four specific factors when making such a determination.

(e) Petitions for purpose-based waivers of emergency information and video description apparatus requirements.

The Commission may waive emergency information and video description apparatus requirements for any apparatus or class of apparatus that is (a) primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound, or (b) designed for multiple purposes, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes. The Commission will address any requests for a purpose-based waiver on a case-by-case basis, and waivers will be available prospectively for manufacturers seeking certainty prior to the sale of a device.

(f) Submission and review of consumer eligibility information pertaining to DIRECTV, LLC's (DIRECTV's) waiver for provision of aural emergency information during The Weather Channel's programming.

The Commission granted DIRECTV a waiver with respect to the set-top box models on which it is not able to implement audio functionality for emergency information, but conditioned such relief by requiring DIRECTV to

provide, upon request and at no additional cost to customers who are blind or visually impaired, a set-top box model that is capable of providing aural emergency information. DIRECTV may require customers who are blind or visually impaired to submit reasonable documentation of disability to DIRECTV as a condition to providing the box at no additional cost.

OMB Control No.: 3060–0994.

Title: Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L Band, and the 1.6/2.4 GHz Band.

Form No.: Not Applicable.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 126 respondents; 126 responses.

Estimated Time per Response: 0.50–50 hours per response.

Frequency of Response: On occasion, one time and annual reporting requirements, third-party disclosure and recordkeeping requirements.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 7, 302, 303(c), 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 157, 302, 303(c), 303(e), 303(f) and 303(r).

Total Annual Burden: 520 hours.

Annual Cost Burden: \$530,340.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as a revision following the 60-day comment period in order to obtain the full three-year clearance from OMB.

On December 23, 2016, the Commission released a Report and Order in IB Docket No. 13–213, FCC 16–181, titled “Terrestrial Use of the 2473–2495 MHz Band for Low-Power Mobile Broadband Networks; Amendments to Rules for the Ancillary Terrestrial Component (ATC) of Mobile Satellite Service Systems.” The revisions to 47 CFR part 25 adopted in the Report and Order remove a portion of the information collection requirements as it relates to a newly proposed low power broadband network, as described in document FCC 16–181. These revisions enable ATC licensees to operate low-power ATC using licensed

spectrum in the 2483.5–2495 MHz band. Although the original low-power ATC proposal described the use of the adjacent 2473–2483.5 MHz band, low-power terrestrial operations at 2473–2483.5 MHz were not authorized by the Report and Order. The revisions provide an exception for low-power ATC from the requirements contained in section 25.149(b) of the Commission’s rules, which require detailed showings concerning satellite system coverage and replacement satellites. The revisions also provide an exception from a rule requiring integrated service, which generally requires that service handsets be capable of communication with both satellites and terrestrial base stations. Accordingly, the provider of low-power ATC would be relieved from certain burdens that are currently in place in the existing information collection. To qualify for authority to deploy a low-power terrestrial network in the 2483.5–2495 MHz band, an ATC licensee would need to certify that it will utilize a Network Operating System to manage its terrestrial low-power network. Although the Report and Order also created new technical requirements for equipment designed to communicate with a low-power ATC network, satisfaction of these technical requirements relieves ATC licensees from meeting other technical requirements that apply to ATC systems generally. We also had a revision to this information collection to reflect the elimination of the elements of this information collection for 2 GHz MSS. See 78 FR 48621–22.

The purposes of the existing information collection are to obtain information necessary for licensing operators of Mobile-Satellite Service (MSS) networks to provide ancillary services in the U.S. via terrestrial base stations (Ancillary Terrestrial Components, or ATCs); obtain the legal and technical information required to facilitate the integration of ATCs into MSS networks in the L-Band and the 1.6/2.4 GHz Bands; and to ensure that ATC licensees meet the Commission’s legal and technical requirements to develop and maintain their MSS networks and operate their ATC systems without causing harmful interference to other radio systems.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–08968 Filed 5–3–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Systemic Resolution Advisory Committee; Notice of Charter Renewal

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of renewal of the FDIC Systemic Resolution Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (“FACA”), and after consultation with the General Services Administration, the Chairman of the Federal Deposit Insurance Corporation has determined that renewal of the FDIC Systemic Resolution Advisory Committee (“the Committee”) is in the public interest in connection with the performance of duties imposed upon the FDIC by law. The Committee has been a successful undertaking by the FDIC and has provided valuable feedback to the agency on a broad range of issues regarding the resolution of systemically important financial companies pursuant to Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Committee will continue to provide advice and recommendations on how the FDIC’s systemic resolution authority, and its implementation, may impact regulated entities and other stakeholders potentially affected by the process. The structure and responsibilities of the Committee are unchanged from when it was originally established in May 2011. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

Dated: May 1, 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. 2017–08985 Filed 5–3–17; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, May 9, 2017 at 10:00 a.m. and its continuation at the conclusion of the open meeting on May 11, 2017.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices. Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694-1220.

Dayna C. Brown,

Secretary and Clerk of the Commission.

[FR Doc. 2017-09070 Filed 5-2-17; 11:15 am]

BILLING CODE 6715-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 18, 2017.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521. Comments can also be sent electronically to

Comments.applications@phil.frb.org:

1. *Firetree, Ltd., Williamsport, Pennsylvania*, individually and as part of a group acting in concert with Firetree, Ltd., William Brown, Muncy, Pennsylvania; Donna Spitler, and Thomas Spitler, both of Wooster, Ohio; and Perter Went, Jersey City, New Jersey; to retain voting shares of Woodlands Financial Services Company, Williamsport, Pennsylvania,

and thereby retain shares of Woodlands Bank, Williamsport, Pennsylvania.

Board of Governors of the Federal Reserve System, April 28, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017-08960 Filed 5-3-17; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 30, 2017.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166-2034. Comments can also be sent electronically to

Comments.applications@stls.frb.org:

1. *Home Bancshares, Inc.*, Conway, Arkansas; to acquire 100 percent of Stonegate Bank, Pompano Beach, Florida.

Board of Governors of the Federal Reserve System, April 28, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017-08959 Filed 5-3-17; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

[File No. 161 0221; Docket No. C-4615]

Emerson Electric Co. and Pentair plc; Analysis 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 methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 30, 2017.

ADDRESSES: Interested parties may file a comment at <https://ftcpublic.commentworks.com/ftc/emersonelectricconsent> 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 Emerson Electric Co. and Pentair plc, File No. 161 0221” on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/emersonelectricconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “In the Matter of Emerson Electric Co. and Pentair plc, File No. 161 0221” 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:

Jonathan Platt (212-607-2819) or Ryan Harsch (212-607-2805), FTC, Northeast Region, One Bowling Green, Suite 318, New York, NY 10004.

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 April 28, 2017), 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 May 30, 2017. Write "In the Matter of Emerson Electric Co. and Pentair plc, File No. 161 0221" 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.

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/emersonelectricconsent> 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 Emerson Electric Co. and Pentair plc, File No. 161 0221" 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 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. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Web site at www.ftc.gov, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else'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, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by 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)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Once your comment has been posted on the public FTC Web site—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC Web site, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request in accordance with the law and the public interest. Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). 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).

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 May 30, 2017. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Emerson Electric Co. ("Emerson") and Pentair plc ("Pentair") (collectively, the "Respondents") that is designed to remedy the anticompetitive

effects that would likely result from Emerson's proposed acquisition of Pentair's valves and controls business.

Pursuant to a Share Purchase Agreement, dated as of August 18, 2016, Emerson proposes to acquire the equity interests of certain subsidiaries of Pentair in exchange for cash considerations of approximately \$3.15 billion (the "Acquisition"). The proposed Acquisition would combine the two largest suppliers of switchboxes, which are industrial valve control products, in the United States. The Commission's Complaint alleges that the proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the United States market for switchboxes.

The proposed Decision and Order ("Order") requires Emerson to divest Pentair's switchbox manufacturer subsidiary, Westlock Controls Corporation ("Westlock"), to Crane Co. ("Crane") no later than ten days after the Acquisition is consummated. The divestiture requires Emerson to transfer to Crane all of the facilities, personnel, confidential information, and intellectual property associated with the design, manufacture, and sale of Westlock's products, which will allow Crane to effectively compete in the switchbox market.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement, along with any comments received, and decide whether it should withdraw from the Consent Agreement, modify it, or make the Order final.

II. The Respondents

Emerson, headquartered in St. Louis, Missouri, is a diversified global manufacturing company that provides a variety of products and services for the industrial, commercial, and consumer markets. Through its Automated Solutions segment, Emerson is a leading manufacturer of industrial equipment and instrumentation, including valves, actuators, regulators, and switchboxes, which it sells to customers in, among others, the oil and gas, refining, chemical, and power generation industries.

Pentair, headquartered in London, United Kingdom, with a main U.S. office located in Minneapolis,

Minnesota, is a global water, fluid, thermal management, and equipment protection company. The Pentair Valves & Controls business manufactures valves, fittings, actuators, and controls, including switchboxes, for a broad array of industrial markets.

III. The Relevant Markets

The relevant product market at issue in this transaction is switchboxes. Switchboxes are devices that monitor and control isolation (or “on/off”) valves, which control the flow of liquids or gases through pipes in industrial applications, including the oil and gas, chemical, petrochemical, and power generation industries. Switchboxes consist of a hard outer case, which often is made of explosion-proof material, containing switches and other electrical components that detect the position of a valve—that is, whether it is open or closed—and communicate that position via a visual display and/or digital signals to the facility’s workers and control room. Switchboxes are ancillary components that are typically bundled together with a valve, an actuator (a device that physically opens and closes a valve), and other control products into an “automated” isolation valve, which can open and close automatically without manual intervention. Because switchboxes perform a unique and essential role in the efficient and safe operation of industrial plants and facilities, there currently are no practical alternatives to switchboxes.

The United States is the relevant geographic market in which to assess the competitive effects of the Acquisition. The United States operates distinctly compared to international markets. Unlike international markets, the domestic market relies heavily on distributors, so competition takes place at both the distributor and customer level. Moreover, customers in the United States have distinct brand preferences for leading switchbox brands. Because switchboxes are frequently used under hazardous conditions in which safety is critical, brand reputation and product reliability are very important to customers. As a result, U.S. customers are unlikely to turn to brands that are not well established in the United States in response to a small but significant non-transitory increase in price.

Pentair’s “Westlock” and Emerson’s “TopWorx” switchbox businesses are the two largest suppliers of switchboxes in the United States, with a combined market share of approximately 60%. Other than Westlock and TopWorx, there are few suppliers with appreciable market shares. Each of these suppliers

has substantially smaller market shares than either Westlock or TopWorx. In addition, there is a fringe of small manufacturers with very small market shares. The switchboxes produced by these smaller suppliers are not widely accepted by customers in the United States. The Acquisition would substantially increase concentration levels in the U.S. switchbox market and would result in a highly concentrated market. Under the *Horizontal Merger Guidelines*, the increase in concentration would presumptively create or enhance market power.

IV. Effects of the Acquisition

Absent a divestiture, the proposed Acquisition would likely harm competition in the U.S. switchbox market. Emerson and Pentair are each other’s closest competitors in this market, and customers benefit from that competition through lower prices and increased product innovation. TopWorx and Westlock are the most widely used and highly regarded brands of switchboxes in the United States and, for many customers, are the only acceptable brands of switchboxes. By eliminating competition between Emerson and Pentair, the Acquisition likely would produce unilateral effects in the form of higher prices and reduced innovation.

V. Entry

Entry into the U.S. market for switchboxes would not be timely, likely, or sufficient in to deter or counteract the anticompetitive effects of the Acquisition. The competitive strength of TopWorx and Westlock largely reflects their brand reputation for reliability and durability, which could not be quickly replicated by a new entrant. In addition, customers will typically only purchase switchboxes from approved suppliers and are reluctant to consider unproven manufacturers. This is because customers place a premium on safety, and product failure could cause costly and potentially dangerous disruption to critical applications. Any new entrant would need to not only undertake a lengthy and costly process of new product development, but would also need to undergo rigorous vetting, testing, and approval to become viable alternatives for many customers. Given the difficulty in overcoming these obstacles, it is unlikely that a new entrant or existing lower-tier competitor could effectively restore the competition lost through this Acquisition.

VI. The Proposed Consent Agreement

The proposed Consent Agreement remedies the competitive concerns

raised by the Acquisition by requiring Emerson to divest Pentair’s Westlock subsidiary to Crane, a publicly traded manufacturer of highly engineered industrial products, including industrial valves. The proposed divestiture includes everything needed for Crane to compete effectively in the U.S. market for switchboxes.

Crane, headquartered in Stamford, Connecticut, is a 162-year-old company with a long history as a significant competitor in the U.S. industrial valves market, providing it with the industry experience and expertise necessary to replace the competition that would be lost due to the Acquisition. Crane’s portfolio of valves complements the switchbox and other valve control products that Westlock manufactures, but Crane does not sell any products that compete with Westlock. Crane has a substantial U.S. infrastructure and customer base, including many of the same customers as Westlock, and pre-existing relationships with many of Westlock’s distributors. Crane is thus well positioned to acquire and integrate Westlock and maintain the benefits of competition in this market.

Under the terms of the Order, Emerson must divest all of Westlock’s businesses and assets to Crane, including Westlock’s manufacturing facility located in Saddle Brook, New Jersey, and all of the confidential information and intellectual property related to Westlock’s product portfolio. Emerson must also allow Crane to have access to and hire any Westlock employees who were engaged in the research, development, manufacturing, marketing, or sales of Westlock’s products. In order to ensure that the divestiture will succeed, the Order requires the Respondents to enter into a one-year transitional services agreement with Crane for certain functions that Pentair performed for Westlock (such as accounts receivable, tax, legal, payroll, benefits, and other related functions). In order to preserve competition with Emerson, the Order requires Emerson to institute procedures that protect sensitive non-public information regarding Westlock’s business from the Emerson business people in competing lines of business. It also restricts Emerson from instituting patent infringement suits against Crane for the Westlock switchbox product lines that are currently being marketed or in development.

The Respondents must complete the divestiture no later than ten days after the consummation of the Acquisition. If the Commission determines that Crane is not an acceptable acquirer, the Order requires the Respondents to unwind the

sale and accomplish a divestiture of Westlock to another Commission-approved acquirer within 180 days of the date the Order becomes final. Further, the Order allows the Commission to appoint a monitor to ensure that the Respondents expeditiously comply with their obligations under the Order and a Divestiture Trustee to accomplish the divestiture should the Respondents fail to comply with their divestiture obligations.

VII. Opportunity for Public Comment

The purpose of this analysis is to facilitate public comment on the Consent Agreement to aid the Commission in determining whether it should make the Consent Agreement final. This analysis is not intended to constitute an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 2017-08965 Filed 5-3-17; 8:45 am]

BILLING CODE 6750-01-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 “*The Re-engineered Visit for Primary Care (AHRQ REV)*.” This proposed information collection was previously published in the **Federal Register** on February 13, 2017 and allowed 60 days for public comment. AHRQ received one comment from the public. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by June 5, 2017.

ADDRESSES: Written comments should be submitted to: AHRQ’s OMB Desk Officer by fax at (202) 395-6974 (attention: AHRQ’s desk officer) or by email at OIRA_submission@omb.eop.gov (attention: AHRQ’s desk 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:

Proposed Project

The Re-Engineered Visit for Primary Care (AHRQ REV)

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501-3521, AHRQ invites the public to comment on this proposed information collection. This project, *The Re-engineered Visit for Primary Care (AHRQ REV)*, directly addresses the agency’s goal to conduct research to enhance the quality of health care and reduce avoidable readmissions, which are a major indicator of poor quality and patient safety.

Research from AHRQ’s Healthcare Cost and Utilization Project (HCUP) indicates that in 2011 there were approximately 3.3 million adult hospital readmissions in the United States. Adults covered by Medicare have the highest readmission rate (17.2 per 100 admissions), followed by adults covered by Medicaid (14.6 per 100 admissions) and privately insured adults (8.7 per 100 admissions). High rates of readmissions are a major patient safety problem and are associated with a range of adverse events, such as prescribing errors and misdiagnoses of conditions in the hospital and ambulatory care settings. Collectively these readmissions are associated with \$41.3 billion in annual hospital costs, many of which potentially could be avoided.

In recent years, payer and provider efforts to reduce readmissions have proliferated. Many of these national programs have been informed or guided by evidence-based research, toolkits and guides, such as AHRQ’s RED (Re-Engineered Discharge), STAAR (State Action on Avoidable Readmission), AHRQ’s Project BOOST (Better Outcomes by Optimizing Safe Transitions), the Hospital Guide to Reducing Medicaid Readmissions, and Eric Coleman’s Care Transitions Intervention. These efforts have largely focused on enhancing practices occurring within the hospital setting, including the discharge process transitions among providers and between settings of care. While many of these efforts have recognized the critical role of primary care in managing care transitions, they have not had an explicit focus on enhancing primary care with the aim of reducing avoidable readmissions.

Evidence-based guidance to reduce readmissions and improve patient safety are comparatively lacking for the

primary care setting. This gap in the literature is becoming more pronounced as primary care is increasingly serving as the key integrator across the health system as part of payment and delivery system reforms. This research project aims to address the important and unfulfilled need to improve patient safety and reduce avoidable readmissions within the primary care context.

AHRQ’s goals in supporting this 30-month project are to build on the knowledge base from the inpatient settings, add to the expanding evidence base on preventing readmissions by focusing on the primary care setting, and provide insight on the components and themes that should be part of a re-engineered visit in primary care. This work will ultimately inform an effective intervention that can be tested in a diverse set of primary care clinics.

To meet AHRQ’s goals and objectives, the agency awarded a task order to John Snow, Inc. (JSI) to conduct qualitative research using quality improvement to investigate the primary care-based transitional care workflow from the primary care staff, patient, and community agency perspective.

This research has the following goals:

1. Analyze current processes in the primary care visit associated with hospital discharge; and
2. Identify components of the re-engineered visit.

This study is being conducted by AHRQ through its contractor 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 and with respect to quality measurement and improvement. 42 U.S.C 299a(a)(1) and (2).

Method of Collection

To analyze current processes in the primary care visit associated with hospital discharge, the data collection is separated into seven smaller data collection activities to minimize research participant burden while still allowing for the collection of necessary data. Each of these tasks will be conducted at nine primary care sites:

1. Primary care site organizational characteristics survey: The purpose of this background information on the primary care site’s organizational characteristics is to offer context for the work flow mapping. It will help make the work flow mapping process more efficient and reduce burden by only requesting information that is already known by each site contact. One person

per primary care site will be engaged for this task.

2. Primary care site patient characteristics survey: The purpose of this background information on the primary care site’s patients is to offer context for the work flow mapping. It will help make the work flow mapping process more efficient and reduce burden by only requesting information that is already known in the primary care practices’ billing or clinical information systems. One person per primary care site will be engaged for this task.

3. Work flow mapping preliminary interviews: The purpose of this flow mapping “pre-work” is to engage individual primary care staff members to think about the current work flow map in order to set a foundation for the actual work flow mapping process. It is anticipated that eight individuals per primary care site will participate, for a total of 72 participants.

4. Work flow mapping: This collection will take place in a group meeting that brings together staff from various role types to collaborate in identifying their workflow processes involved in planning for and executing post-hospital follow up services for their patients. Based on feasibility, these may be smaller or larger group meetings, but the total burden on each role type participant is the same. The end goal of this meeting is to have enough information to develop an initial process flow map on paper. It is anticipated that 10 individuals per primary care site will participate, for a total of 90 participants.

5. Work flow mapping follow-up interviews: Once the initial process flow map is on paper, each role type will be asked to review to correct, add, or confirm detail to the document. Once the flow map has been edited and ratified by the primary care site staff, each role type will be asked specific questions regarding the flaws identified in the process flow for the failure mode effects analysis. It is anticipated that eight individuals per primary care site will participate, for a total of 72 participants.

6. Patient interviews: As a complement to the work flow mapping, there will also be a process flow map developed from the patient’s perspective. The purpose of the patient

interviews is to capture patient perspectives on potential breakdowns in making the transition from the hospital to care in the primary care settings and to get, in their own words, information about the initial hospitalization and barriers to accessing follow-up care. One of the widely acknowledged limitations of the existing evidence based toolkits is that they are not designed with input from patients.

This has occurred despite the fact that clinical experience suggests that providers often fail to identify patient needs and concerns. Research has shown that there are cultural, social, and behavioral factors that may contribute to readmissions and assessing the patient’s perspective can help to better understand the barriers to receiving appropriate follow-up care.

Patient and family interviews are increasingly common practices in efforts to improve care transitions and reduce readmissions, endorsed by CMS, the Institute for Healthcare Improvement, Kaiser Permanente, and others. This patient interview will collect unique information on the barriers to effective care transitions in the post-discharge period care, information which cannot be collected in other ways. It is anticipated that ten post-discharge patients per primary care site will be interviewed for a total of 90 patients.

7. Community agency interviews: As a complement to the work flow mapping, the process flow map developed will reflect the perspective of community agencies affiliated with the primary care sites to assist patients. It is anticipated that five community agency representatives per primary care site will be interviewed.

The purpose of this data collection is to understand the key components that should be included in the re-engineered visit in primary care. The project team will examine the diverse settings, staff, and transitional care activities across a variety of primary care practices to identify key transitional care processes that impact patient outcomes, the challenges to implementing those processes, and ways to improve those processes.

The project team will distill the themes and principles that should be a part of the re-engineered visit and develop an outline and summary of its components, with a comparison/

contrast of the components across sites and discussion of the generalizability of these components to different settings.

The results of this research will add to the expanding evidence base on preventing readmissions by focusing on the primary care setting, and provide insight on the components and themes that should be part of a re-engineered visit. This information will ultimately inform an effective intervention that can be tested in a diverse set of primary care clinics.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated burden hours to the respondents for providing all of the data needed to meet the project’s objectives. The hours estimated per responses are based on the pilot project results.

For the primary care site organizational characteristics survey and patient characteristics survey, one person per each of the nine primary care sites will participate. Both surveys are anticipated to take 1.5 hours to complete.

For the work flow mapping preliminary interviews, we estimate that eight primary care staff per primary care site will participate, with each individual spending 0.5 hours in these interviews.

For the work flow mapping group interview, we estimate that 10 primary care staff per primary care site will participate, with each individual spending 1.5 hours in these interviews. Finally, we estimate that eight primary care staff per primary care site will participate in the work flow mapping follow-up interviews, with each individual spending 0.5 hours in this data collection activity.

There will be 10 patients interviewed in association with each primary care site. These patient interviews are expected to take 0.5 hours per individual research participant.

Lastly, there will be five community agency staff members interviewed in association with each primary care site. These interviews are expected to take 1 hour per individual research participant.

Exhibit 2 shows the estimated cost burden for the respondents’ time to participate in the project. The total annualized cost burden is estimated at \$11,500.30.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Primary care site organizational characteristics survey	9	1	1.5	13.5

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Primary care site patient characteristics survey	9	1	1.5	13.5
Workflow mapping preliminary interview	72	1	0.5	36
Workflow mapping group interview	90	1	1.5	135
Workflow mapping follow-up interview	72	1	0.5	36
Patient interview	90	1	0.5	45
Community agency interview	45	1	1	45
Total	387	n/a	n/a	2,628 hours

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Primary care site organizational characteristics survey	9	13.5	^a \$ 40.41	\$ 545.54
Primary care site patient characteristics survey	9	13.5	^a 40.41	545.54
Workflow mapping preliminary interview	72	36	^a 40.41	1,454.76
Workflow mapping group interview	90	135	^a 40.41	5,455.35
Workflow mapping follow-up interview	72	36	^a 40.41	1,454.76
Patient interview	90	45	^b 23.23	1,045.35
Community agency interview	45	45	^c 22.20	999.00
Total	387	n/a	n/a	11,500.30

* For hourly average wage rates, mean hourly wages from the Bureau of Labor Statistics (BLS) May 2015 national occupational employment wage estimates were used. http://www.bls.gov/oes/current/oes_nat.htm#00-0000.

^a Participants will include a mix of providers and front desk staff; therefore a blended rate for these tasks are used including Nurse (\$33.55), Medical Assistant (\$15.01¹), Front Desk Staff (\$13.38²), Program Director (\$32.56), Pharmacist (\$56.96), Physician (\$91.60), Behavioral health provider (\$22.03).

^b Based upon the mean wages for consumers (all occupations).

^c Based upon the mean wages for Social Workers.

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,
Acting Director.

[FR Doc. 2017-08997 Filed 5-3-17; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcements (FOAs) GH16-006, Conducting Public Health Research in Kenya; GH17-004, Conducting Public Health Research Activities in Egypt; GH17-005, Conducting Public Health Research in China.

Time and Date: 9:00 a.m.–2:00 p.m., EDT, May 24, 2017 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to “Conducting Public Health Research in Kenya”, GH16-006; “Conducting Public Health Research Activities in Egypt”, GH17-004; and “Conducting Public Health Research in China”, GH17-005.

Contact Person for More Information: Hylan Shoob, Scientific Review Officer, Center for Global Health (CGH) Science Office, CGH, CDC, 1600 Clifton Road NE., Mailstop D-69, Atlanta, Georgia 30033, Telephone: (404) 639-4796.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

¹ <http://www.bls.gov/oes/current/oes319092.htm>.

² <http://www.bls.gov/oes/current/oes434171.htm>.

Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017-09013 Filed 5-3-17; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement, PS17-005, Strengthening HIV/AIDS Research in Kenya.

Time and Date: 10:00 a.m.–5:00 p.m., EDT, May 24, 2017 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to “Strengthening HIV/AIDS Research in Kenya”, PS17-005.

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30329, Telephone: (404) 718-8833.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017-09014 Filed 5-3-17; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement, RFA-TS17-001, Identify and Characterize Potential Environmental Risk Factors for Amyotrophic Lateral Sclerosis (ALS).

Time and Date: 8:00 a.m.–5:00 p.m., EDT, May 31, 2017 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to “Identify and Characterize Potential Environmental Risk Factors for ALS”, RFA-TS-17-001.

Contact Person for More Information: Oscar Tarrago, M.D., M.P.H., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F63, Atlanta, Georgia 30341-3724, Telephone: (770) 488-3492.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017-09015 Filed 5-3-17; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Center for States Evaluation Ancillary Data Collection.

OMB No.: New Collection.

Description: The Evaluation of the Child Welfare Capacity Building Collaborative, Center for States is sponsored by the Children’s Bureau, Administration for Children and Families of the U.S. Department of Health and Human Services. The purpose of this evaluation is to respond to a set of cross-cutting evaluation questions posed by the Children’s Bureau. This new information collection is an ancillary part of a larger data collection effort being conducted for the evaluation of the Child Welfare Capacity Building Collaborative. Two groups of instruments for the larger evaluation have already been submitted, and requests for clearance have been submitted to the Office of Management and Budget (see **Federal Register** Volume 80, No. 211, November 2, 2015; **Federal Register** Volume 81, No. 41, March 2, 2016; **Federal Register** Volume 81, No. 111, June 9, 2016; **Federal Register** Volume 81, No. 186, September 26, 2016), with the first group of instruments approved on August 31, 2016. This notice details a group of instruments that are specific only to the Center for States. The instruments focus on (1) evaluating an innovative approach to engaging professionals in networking and professional development through virtual conferences, (2) understanding fidelity to and effectiveness of the Center for States’ Capacity Building Model, and (3) capturing consistent information during the updated annual assessment process focused on related contextual issues impacting potential service delivery such as implementation of new legislation.

Respondents: Respondents of these data collection instruments will include child welfare agency staff and stakeholders who directly receive services.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Child Welfare Virtual Conference Session Surveys	800	6	.08	384
Child Welfare Virtual Conference Focus Group Guide	30	1	1	30
Child Welfare Virtual Conference Interview Guide	20	1	.5	10
Child Welfare Virtual Conference Registration Form	1500	1	.03	45
Child Welfare Virtual Conference Exit Survey	500	1	.16	80
Tailored Services Practice Model Survey	200	1	.12	24
Assessment Observation—Group Debrief	114	1	.25	28.5
Service Delivery and Tracking and Adjustment Observation—Group Debrief	160	1	.25	40
Assessment and Service Delivery State Lead Interviews—Supplemental Questions	50	1	.5	25
Annual Assessment Update (8 systematic questions)	57	1	.08	4.56

Estimated Total Annual Burden Hours: 671.06.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2017-08961 Filed 5-3-17; 8:45 am]

BILLING CODE 4184-44-P

SUMMARY: The Administration for Community Living published a proposed collection of information document in the **Federal Register** on March 13, 2017 (82 FR 13457 and 13458). The Web page link where the proposed information collection entitled the National Survey of Older Americans Act Participants 2017 Draft could be found is no longer functional as of Thursday May 4, 2017, due to an update of the [ACL.gov](http://acl.gov) Web site.

FOR FURTHER INFORMATION CONTACT: Heather Menne at 202-795-7733 or Heather.Menne@acl.hhs.gov.

SUPPLEMENTARY INFORMATION:

Correction

For the remainder of the public comment period through May 12, 2017, the proposed information collection entitled the National Survey of Older Americans Act Participants 2017 Draft can be found at: <https://acl.gov/NewsRoom/Index.aspx>.

Dated: April 28, 2017.

Daniel P. Berger,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2017-09022 Filed 5-3-17; 8:45 am]

BILLING CODE 4154-01-P

SUMMARY: The Administration for Community Living published a proposed collection of information document in the **Federal Register** on February 23, 2017. (82 FR 11471 and 11472) The Web page link where the proposed revision to an existing data collection related to the Centers for Independent Living Program Performance Report (CIL PPR) could be found is no longer functional as of Thursday May 4, 2017, due to an update of the [ACL.gov](http://acl.gov) Web site.

FOR FURTHER INFORMATION CONTACT: Corinna Styles at 202-795-7446.

SUPPLEMENTARY INFORMATION:

Correction

For the remainder of the public comment period through May 5, 2017, the proposed revision to the Centers for Independent Living Program Performance Report (CIL PPR) can be found at: <https://acl.gov/NewsRoom/Index.aspx>.

Dated: April 28, 2017.

Daniel P. Berger,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2017-09021 Filed 5-3-17; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Public Comment Request; Proposed Extension With Modifications of a Currently Approved Collection; National Survey of Older Americans Act Participants; Correction

AGENCY: Administration for Community Living, HHS.

ACTION: Notice of correction.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Public Comment Request; Extension of a Currently Approved Information Collection (ICR-REV); Centers for Independent Living Annual Performance Report (CILPPR); Correction

AGENCY: Administration for Community Living, HHS.

ACTION: Notice of correction.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Administration for Community Living; Agency Information Collection Activities; Proposed Collection; Public Comment Request; Protection and Advocacy for Traumatic Brain Injury (PATBI) Program Performance Report; Correction

AGENCY: Administration for Community Living, HHS.

ACTION: Notice of correction.

SUMMARY: The Administration for Community Living published a proposed collection of information document in the **Federal Register** on April 26, 2017. (82 FR 19245 and 19246) The Web page link where the proposed Protection and or Traumatic Brain Injury (PATBI) Program Performance Report (PPR) form could be found is no longer functional as of Thursday May 4, 2017, due to an update of the *ACL.gov* Web site.

FOR FURTHER INFORMATION CONTACT: Wilma Roberts at 202-795-7449 or Wilma.Roberts@acl.hhs.gov.

SUPPLEMENTARY INFORMATION:

Correction

For the remainder of the public comment period through May 26, 2017, the proposed Protection and or Traumatic Brain Injury (PATBI) Program Performance Report (PPR) form can be found at: <https://acl.gov/NewsRoom/Index.aspx>.

Dated: April 28, 2017.

Daniel P. Berger,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2017-09020 Filed 5-3-17; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Funding Opportunity Announcement and Grant Application Template for ACL Discretionary Grant Programs; Correction

AGENCY: Administration for Community Living, HHS.

ACTION: Notice of correction.

SUMMARY: The Administration for Community Living published a proposed collection of information document in the **Federal Register** on April 26, 2017. (82 FR 19246 and 19247) The Web page link where the proposed Funding Opportunity Announcement and Grant Application Template for ACL Discretionary Grant Programs could be found is no longer functional as of Thursday May 4, 2017, due to an update of the *ACL.gov* Web site.

FOR FURTHER INFORMATION CONTACT: Mark Snyderman at 202-795-7439 or Mark.Snyderman@acl.hhs.gov.

SUPPLEMENTARY INFORMATION:

Correction

For the remainder of the public comment period through May 26, 2017, the proposed Funding Opportunity Announcement and Grant Application Template for ACL Discretionary Grant Programs can be found at: <https://acl.gov/NewsRoom/Index.aspx>.

Dated: April 28, 2017.

Daniel P. Berger,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2017-09023 Filed 5-3-17; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Determination of Number of Entities and Recruitment of Entities for Assignment of Corps Personnel Obligated Under the National Health Service Corps Scholarship Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: HRSA has determined that a minimum Health Professional Shortage Area (HPSA) score of 17 for assignment of all service-ready National Health Service Corps (NHSC) scholars is necessary for HRSA to meet its statutory obligation to identify a number of entities eligible for NHSC scholar placement that is at least equal to, but not greater than, twice the number of NHSC scholars available to serve in the 2017-2018 placement cycle. HRSA is also posting the proposed listing of entities and associated HPSA scores that will receive priority for assignment of NHSC Scholarship recipients available for service during the period October 1, 2017, through September 30, 2018, on the Health Workforce Connector Web site (formerly known as the NHSC Jobs Center) at <https://connector.hrsa.gov/>. The Health Workforce Connector includes sites that are approved for performance of service by NHSC scholars; however, entities on this list may or may not have current job vacancies.

DATES: Entities interested in providing additional data and information in support of their inclusion on the list of entities that will receive priority in assignment of NHSC scholars, or in support of a higher priority determination, must do so in writing no later than June 5, 2017.

ADDRESSES: Information in support of inclusion on the list of entities or a higher priority determination should be submitted to: Beth Dillon, Director, Division of Regional Operations, Bureau of Health Workforce, 1961 Stout Street, Denver, CO 80294. This information will be considered in preparing the final list of entities that are receiving priority for the assignment of NHSC Scholarship-obligated Corps personnel.

SUPPLEMENTARY INFORMATION: In accordance with the statutory requirement under 42 U.S.C. 254f-1(d), HRSA has determined that a minimum HPSA score of 17 for assignment of all service-ready NHSC scholars enables identification of a number of entities eligible for NHSC scholar placement that is at least equal to, but not greater than, twice the number of NHSC scholars available to serve in the 2017-2018 placement cycle. More specifically, for the program year October 1, 2017, through September 30, 2018, HPSAs of greatest shortage for determination of priority for assignment of NHSC Scholarship-obligated Corps personnel is defined as follows: (1) Primary medical care HPSAs with scores of 17 and above are authorized for the assignment of NHSC scholars who are primary care physicians, family nurse practitioners, physician assistants, or certified nurse midwives; (2) mental health HPSAs with scores of 17 and above are authorized for the assignment of NHSC scholars who are psychiatrists or mental health nurse practitioners; and (3) dental HPSAs with scores of 17 and above are authorized for the assignment of NHSC scholars who are dentists.

The proposed listing of entities and associated HPSA scores that will receive priority for assignment of NHSC Scholarship recipients available for service during the period October 1, 2017, through September 30, 2018, is posted on the Health Workforce Connector Web site (formerly known as the NHSC Jobs Center) at <https://connector.hrsa.gov/>. Entities interested in providing additional data and information in support of their inclusion on this list of entities or in support of a higher priority determination must do so in writing by the date above.

Please note that HRSA may update the list of HPSAs and entities eligible to receive priority for the placement of NHSC scholars and may remove or add entities to the Health Workforce Connector during the annual Site Application competition. Accordingly, entities that no longer meet eligibility criteria, including those sites whose 3-

year approval as an NHSC service site has lapsed or whose HPSA designation has been withdrawn or proposed for withdrawal, will be removed from the priority listing.

Sites wishing to request an additional scholar must complete an Additional Scholar Request form available at <http://nhsc.hrsa.gov/downloads/additionalrequestform.pdf>. NHSC-approved sites that do not meet the authorized threshold HPSA score of 17 may post job openings on the Health Workforce Connector; however, scholars seeking placement between October 1, 2017, and September 30, 2018, will be advised that they can only apply for open positions at sites that meet the threshold placement HPSA score of 17. While not eligible for scholar placements in the 2017–2018 cycle, vacancies in HPSAs scoring less than 17 will be used by the NHSC in evaluating the HPSA threshold score for the next annual scholarship placement cycle.

The program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: April 27, 2017.

James Macrae,

Acting Administrator.

[FR Doc. 2017–09024 Filed 5–3–17; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: 0990–New–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate below or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before July 3, 2017.

ADDRESSES: Submit your comments to Information.Collection.Clearance@hhs.gov and Sherrette.Funn@hhs.gov or by calling (202) 795–7714.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier 0990–New–60D for reference.

Information Collection Request Title: Evaluation of the Certified Community Behavioral Health Clinic Demonstration.

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) at the U.S. Department of Health and Human Services (HHS) is requesting Office of Management and Budget (OMB) approval for data collection activities to support the evaluation of the Certified Community Behavioral Health Clinic (CCBHC) demonstration program.

In April 2014, Section 223 of the Protecting Access to Medicare Act (PAMA) mandated the CCBHC demonstration to address some of the challenges of access, coordination, financing, and quality facing community mental health centers (CMHCs) across the country. The CCBHC demonstration is intended to improve the availability, quality, and

outcomes of CMHC ambulatory care by establishing a standard definition and criteria for CCBHCs, and developing a new payment system that accounts for the total cost of providing comprehensive services to all individuals who seek care. The demonstration also aims to more fully integrate primary and behavioral health care services; ensure more consistent use of evidence-based practices; and, through enhanced standardized reporting requirements, offer an opportunity to assess the quality of care provided by CCBHCs across the country.

Need and Proposed Use of the Information: Section 223 of PAMA requires the Secretary of HHS to provide annual reports to Congress that include an assessment of access to community-based mental health services under Medicaid, the quality and scope of CCBHC services, and the impact of the demonstration on federal and state costs of a full range of mental health services. In addition, PAMA requires the Secretary to provide recommendations regarding continuation, expansion, modifications, or termination of the demonstration no later than December 31, 2021. The data collected under this submission will help ASPE address research questions for the evaluation, and inform the required reports to Congress.

Likely Respondents: Respondents include the following: Certified Community Behavioral Health Clinic demonstration grantees; State Medicaid Officials; State Mental Health Officials; and State Consumer/Family Representatives.

The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Respondents/activity	Number of sites	Number of respondents per site	Responses per respondent	Total responses	Hours per response	Total hour burden
CCBHC site leadership staff	8	1	1	8	2	16
CCBHC frontline providers	8	4	1	24	1	24
CCBHC care managers	8	2	1	16	1	16
CCBHC administrative/finance staff	8	2	1	16	1	16
State Medicaid official	8	2	3	48	1	48
State mental health official	8	2	3	48	1	48
State consumer/family representative	8	2	1	16	1	16
CCBHC site leadership staff	76	1	2	152	4	608
Total	132	16	13	178	16	792

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the

proper performance of the agency’s functions, (2) the accuracy of the estimated burden, (3) ways to enhance

the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques

or other forms of information technology to minimize the information collection burden.

Terry S. Clark,
Assistant Information Collection Clearance Officer.

[FR Doc. 2017-08973 Filed 5-3-17; 8:45 am]
BILLING CODE 4150-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS-0990-New-30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.
ACTION: Notice.

SUMMARY: In compliance with 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 June 5, 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) 795-7714.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier 0999-New-30D for reference.

Information Collection Request Title: Pregnancy Assistance Fund (PAF) Performance Measures Collection, FY2017-FY2019 cohort.
OMB No.: 0990-New.

Abstract: The Office of Adolescent Health (OAH), U.S. Department of Health and Human Services (HHS), is requesting approval by OMB of a new information collection request. In FY2017, OAH expects to award a new, 3-year cohort of Pregnancy Assistance Fund (PAF) grants. Performance measure data collection is a requirement of PAF grants and is included in the funding announcement.

Need and Proposed Use of the Information: The data collection will provide OAH with performance data to inform planning and resource allocation decisions; identify technical assistance needs for grantees; facilitate grantees' continuous quality improvement in program implementation; and provide HHS, Congress, OMB, and the general public with information about the individuals who participate in PAF-funded activities and the services they receive.

Likely Respondents: 20 PAF grantees (States and Tribes).

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
Training	20	1	15/60	5
Partnerships and Sustainability	20	1	3	60
Dissemination	20	1	30/60	10
Reach and Demographics	20	1	645/60	215
Core Services	20	1	750/60	250
Education	20	1	7	140
Birth Outcomes	20	1	270/60	90
Self-Sufficiency Outcomes	20	1	90/60	30
Total	20	1	40	800

Terry S. Clark,
Assistant Information Collection Clearance Officer.

[FR Doc. 2017-08972 Filed 5-3-17; 8:45 am]
BILLING CODE 4168-11-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: June 6, 2017.
Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Vasundhara Varthakavi, DVM, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3E70, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892-9823, (240) 669-5020, *varthakaviv@niaid.nih.gov*. (Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 28, 2017.

Natasha Copeland,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017-08989 Filed 5-3-17; 8:45 am]
BILLING CODE 4140-01-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: National Mental Health Study Field Test—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA) plans to conduct a methodological field test for a potential national mental health study, provisionally named the National Mental Health Study (NMHS). The NMHS will use mental disorder assessments similar to studies last conducted over a decade ago in the National Comorbidity Survey-Replication among adults in 2001–2003 and the National Comorbidity Survey-Adolescent supplement among adolescents in 2001–2002. SAMHSA is collaborating with the National Institute of Mental Health (NIMH) to implement this field test.

The purpose of the NMHS Field Test is to test the procedures for a potential NMHS. The field test consists of three general components. The first component is sample selection using a household screener. The household screener will be used to determine eligibility of individuals and to make selections of individuals to recruit for participation in the second component. The second component consists of an in-person survey of the selected adult and adolescent respondents. The NMHS procedures vary somewhat between adults (aged 18 or older) and adolescents (aged 13 to 17). For all respondents, the in-person assessment (using either the adult or adolescent

instrument) will be conducted primarily using audio computer-assisted self-interviewing (ACASI), with an emphasis on respondents completing the interview in a single session. In addition to the adolescent in-person assessment, parents/legal guardians of adolescent respondents will receive an additional web or phone interviews (the parent instrument). The final component consists of a telephone clinical reappraisal of a selected subgroup of adult and adolescent respondents, with an additional parent/guardian reporting for adolescents.

The NMHS field test will include 1,200 English speaking respondents—900 adults and 300 adolescents in the United States excluding Alaska and Hawaii. Approximately 210 parents/legal guardians of adolescent respondents will complete an additional parent interview. A subsample of approximately 150 adult and adolescent respondents and 50 parent respondents will complete a telephone-based clinical reappraisal follow-up interview. In addition, a subsample of completed screening and interview cases will be re-contacted for a brief telephone interview to verify that interviewers followed proper protocols when collecting data. The sample size supports testing of field procedures, sampling algorithms, and data processing steps. The total annual burden estimate is shown in the table below.

ANNUALIZED ESTIMATED BURDEN FOR THE NATIONAL MENTAL HEALTH STUDY FIELD TEST

Instrument	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
Household Screening	2,331	1	2,331	0.083	193
Interview (including interviews with Adults and Adolescents)	1,200	1	1,200	1.083	1,300
Parent Interview	210	1	210	0.500	105
Clinical Interview	150	1	150	1.000	150
Clinical Parent Interview	50	1	50	0.500	25
Screening Verification	142	1	142	0.067	10
Interview Verification	180	1	180	0.067	12
Total	4,263	.....	4,263	.....	1,795

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 July 3, 2017.

Summer King,
Statistician.

[FR Doc. 2017-08993 Filed 5-3-17; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0004]

Agency Information Collection Activities: Application for Exportation of Articles Under Special Bond

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting 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 information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than July 3, 2017) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0004 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: CBP_PRA@cbp.dhs.gov.

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street

NE., 10th Floor, Washington, DC 20229-1177, or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice.

Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, e.g., permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application for Exportation of Articles under Special Bond.

OMB Number: 1651-0004.

Form Number: CBP Form 3495.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 3495, *Application for Exportation of Articles Under Special Bond*, is an application for exportation of articles entered under temporary bond pursuant to 19 U.S.C. 1202, Chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States, and 19 CFR 10.38. CBP Form 3495 is used by importers to

notify CBP that the importer intends to export goods that were subject to a duty exemption based on a temporary stay in this country. It also serves as a permit to export in order to satisfy the importer's obligation to export the same goods and thereby get a duty exemption. This form is accessible at: <https://www.cbp.gov/newsroom/publications/forms?title=3495&=Apply>.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 30.

Estimated Total Annual Responses: 15,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 2,000.

Dated: May 1, 2017.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2017-09031 Filed 5-3-17; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0030]

Agency Information Collection Activities: Declaration of Unaccompanied Articles

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting 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 information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than July 3, 2017) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0030 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: CBP_PRA@cbp.dhs.gov.

(2) *Mail*. Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT:

Requests for additional PRA information should be directed to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, e.g., permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Declaration of Unaccompanied Articles.

OMB Number: 1651-0030.

Form Number: CBP Form 255.

Current Actions: This submission is being made to extend the expiration

date of this information collection with no change to the burden hours or the information being collected.

Type of Review: Extension (without change).

Affected Public: Individuals.

Abstract: CBP Form 255, Declaration of Unaccompanied Articles, is completed by travelers arriving in the United States with a parcel or container which is to be sent from an insular possession at a later date. It is the only means whereby the CBP officer, when the person arrives, can apply the exemptions or five percent flat rate of duty to all of the traveler's purchases.

A person purchasing articles in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States receives a sales slip, invoice, or other evidence of purchase which is presented to the CBP officer along with CBP Form 255, which is prepared in triplicate. The CBP officer verifies the information, indicates on the form whether the article or articles were free of duty, or dutiable at the flat rate. Two copies of the form are returned to the traveler, who sends one form to the vendor. Upon receipt of the form the vendor places it in an envelope, affixed to the outside of the package, and clearly marks the package "Unaccompanied Tourist Shipment," and sends the package to the traveler, generally via mail, although it could be sent by other means. If sent through the mail, the package would be examined by CBP and forwarded to the Postal Service for delivery. Any duties due would be collected by the mail carrier. If the shipment arrives other than through the mail, the traveler would be notified by the carrier when the article arrives. Entry would be made by the carrier or the traveler at the customs house. Any duties due would be collected at that time.

CBP Form 255 is authorized by 19 U.S.C. 1202 (Chapter 98, Subchapters IV and XVI) and provided for by 19 CFR 145.12, 145.43, 148.110, 148.113, 148.114, 148.115 and 148.116. A sample of this form may be viewed at: <https://www.cbp.gov/newsroom/publications/forms?title=255&=Apply>.

Estimated Number of Respondents: 7,500.

Estimated Number of Responses: 15,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 1,250.

Dated: May 1, 2017.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2017-09034 Filed 5-3-17; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0073]

Agency Information Collection Activities: Notice of Detention

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting 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 information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than July 3, 2017) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0073 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email:* Submit comments to: CBP_PRA@cbp.dhs.gov.

(2) *Mail:* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT:

Requests for additional PRA information should be directed to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should

contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Notice of Detention.

OMB Number: 1651-0073.

Form Number: None.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Customs and Border Protection (CBP) may detain merchandise when it has reasonable suspicion that the subject merchandise may be inadmissible but requires more information to make a positive determination. If CBP decides to detain merchandise, a Notice of Detention is sent to the importer or to the importer's broker/agent no later than 5 business days from the date of examination stating that merchandise has been detained, the reason for the detention, and the anticipated length of the detention. The recipient of this notice may respond by providing information to CBP in order to facilitate the

determination for admissibility, or may ask for an extension of time to bring the merchandise into compliance. The information provided assists CBP in making a determination whether to seize, deny entry of, or release detained goods into the commerce. Notice of Detention is authorized by 19 U.S.C. 1499 and provided for in 19 CFR 151.16, 133.21, 133.25, and 133.43.

Estimated Number of Respondents: 1,350.

Estimated Number of Total Annual Responses: 1,350.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 2,700.

Dated: May 1, 2017.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2017-09032 Filed 5-3-17; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0050]

Agency Information Collection Activities: Importation Bond Structure

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-day notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting 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 information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted (no later than June 5, 2017) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to the CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (82 FR 9751) on February 8, 2017, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Importation Bond Structure.

OMB Number: 1651-0050.

Form Number: CBP Forms 301 and 5297.

Current Actions: This submission is being made to extend the expiration

date with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Bonds are used to ensure that duties, taxes, charges, penalties, and reimbursable expenses owed to the Government are paid; to facilitate the movement of cargo and conveyances through CBP processing; and to provide legal recourse for the Government for noncompliance with laws and regulations. Each person who is required by law or regulation to post a bond in order to secure a Customs transaction must submit the bond on CBP Form 301 which is available at: <https://www.cbp.gov/newsroom/publications/forms?title=301&=Apply>.

Surety bonds are usually executed by an agent of the surety. The surety company grants authority to the agent via a Corporate Surety Power of Attorney, CBP Form 5297. This power is vested with CBP so that when a bond is filed, the validity of the authority of the agent executing the bond and the name of the surety can be verified to the surety's grant. CBP Form 5297 is available at: <https://www.cbp.gov/document/forms/form-5297-corporate-surety-power-attorney>. Bonds are required pursuant to 19 U.S.C.1608, and 1623; 22 U.S.C. 463; 19 CFR part 113.

Form 301, Customs Bond

Estimated Number of Annual Respondents: 800,000.

Total Number of Estimated Annual Responses: 800,000.

Estimated time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 200,000.

Form 5297, Corporate Surety Power of Attorney

Estimated Number of Respondents: 500.

Total Number of Estimated Annual Responses: 500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 125.

Dated: May 1, 2017.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2017-09033 Filed 5-3-17; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2014-0022]

Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will meet via conference call on Tuesday, May 23, 2017. The meeting will be open to the public.

DATES: The TMAC will meet via conference call on Tuesday, May 23, 2017 from 10:30 a.m. to 5:00 p.m. Eastern Daylight Time (EDT). Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: For information on how to access the conference call, information on services for individuals with disabilities, or to request special assistance for the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT** below as soon as possible. Members of the public who wish to dial in for the meeting must register in advance by sending an email to FEMA-TMAC@fema.dhs.gov (attention Mark Crowell) by 11:00 a.m. EDT on Friday, May 19, 2017.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** section below. The Agenda and other associated material will be available for review at www.fema.gov/TMAC by Friday, May 19, 2017. Written comments to be considered by the committee at the time of the meeting must be received by Monday, May 22, 2017, identified by Docket ID FEMA-2014-0022, and submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Email:** Address the email TO: FEMA-RULES@fema.dhs.gov and CC: FEMA-TMAC@fema.dhs.gov. Include the docket number in the subject line of the message. Include name and contact detail in the body of the email.

- **Mail:** Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472-3100.

Instructions: All submissions received must include the words "Federal

Emergency Management Agency" and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Docket: For docket access to read background documents or comments received by the TMAC, go to <http://www.regulations.gov> and search for the Docket ID FEMA-2014-0022.

A public comment period will be held on Tuesday, May 23, 2017, from 1:30—1:50 p.m. EDT. Speakers are requested to limit their comments to no more than two minutes. The public comment period will not exceed 20 minutes. Please note that the public comment periods may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by close of business on Friday, May 19, 2017.

FOR FURTHER INFORMATION CONTACT: Mark Crowell, Designated Federal Officer for the TMAC, FEMA, 500 C St SW., Washington, DC 20024, telephone (202) 646-3432, and email mark.crowell@fema.dhs.gov. The TMAC Web site is: <http://www.fema.gov/TMAC>.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

As required by the *Biggert-Waters Flood Insurance Reform Act of 2012*, the TMAC makes recommendations to the FEMA Administrator on: (1) How to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an Annual Report to the FEMA Administrator that contains: (1) A description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate

maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: On Tuesday, May 23, 2017, the TMAC will review and discuss the outlines and draft content for each of the three TMAC 2017 Annual Report topics: (1) Floodplain Management and Mitigation, (2) Residual Risk, and (3) Future Conditions. A brief public comment period will take place during the meeting. A more detailed agenda will be posted by Tuesday, May 16, 2017, at <http://www.fema.gov/TMAC>.

Dated: April 26, 2017.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Federal Emergency Management Agency.

[FR Doc. 2017-08952 Filed 5-3-17; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2017-0001]

Privacy Act of 1974; System of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of new Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to establish a new Department of Homeland Security system of records titled, "Department of Homeland Security/Immigration and Customs Enforcement-016 FALCON Search and Analysis System of Records." FALCON Search and Analysis is a consolidated information management system that enables ICE law enforcement and homeland security personnel to search, analyze, and visualize volumes of existing information in support of ICE's mission to enforce and investigate violations of U.S. criminal, civil, and administrative laws. Additionally, elsewhere in the **Federal Register**, the Department of Homeland Security is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act because of the law enforcement sensitivity of the data contributed to and produced within the system of records. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before June 5, 2017. This new system will be effective June 5, 2017.

ADDRESSES: You may submit comments, identified by docket number DHS-2017-0001 by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 202-343-4010.
- Mail: Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528-0655.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Amber Smith (202) 732-3300, Privacy Officer, U.S. Immigration and Customs Enforcement. For privacy questions, please contact: Jonathan R. Cantor, (202) 343-1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528-0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) U.S. Immigration and Customs Enforcement (ICE) proposes to establish a new DHS system of records titled, "DHS/Immigration and Customs Enforcement-016 FALCON Search and Analysis System of Records."

U.S. Immigration and Customs Enforcement (ICE) is establishing a consolidated information management system to enable its personnel to search, analyze, and visualize volumes of existing information in support of ICE's mission to enforce and investigate violations of U.S. criminal, civil, and administrative laws. The FALCON Search and Analysis (FALCON-SA) System of Records describes the operation of an ICE information technology system of the same name, which is owned by ICE's Office of Homeland Security Investigations (HSI). This system contains a repository of data that is ingested on a routine or *ad hoc* basis from other existing sources, and an index created from that data to be used for research and analysis in support of ICE HSI's law enforcement mission. FALCON-SA incorporates tools that allow the data to be queried, analyzed, and presented in a variety of formats that can help illuminate relationships among the various data elements. The purpose of FALCON-SA is to help ICE HSI personnel conduct research and analysis using advanced analytic tools in support of their law enforcement mission.

This system of records ingests and aggregates data from a number of

interfaces that fall under the FALCON umbrella, including the FALCON-Tip Line, FALCON-Data Analysis & Research for Trade Transparency System (DARTTS), and FALCON-Roadrunner. All data aggregated from these interfaces, and user access is controlled through a combination of data tagging, access control lists, and other technologies. Using a central data store for FALCON data eliminates the need for multiple copies of the data and streamlines the application of many security and privacy controls. Only data accessed via FALCON-SA is covered by the DHS/ICE-016 FALCON-SA System of Records Notice (SORN). However, the other interfaces are covered by other ICE SORNs, as specified in the System Location section of the SORN. Separate SORNs are appropriate because the data, purposes, and routine uses differ depending on which FALCON interface is being used.

FALCON-SA Data

Information included in FALCON-SA is ingested either on a routine or *ad hoc* basis. Routine ingests are regular updates to datasets that originate from other Government (typically ICE or DHS) data systems. A list of routine ingests into the FALCON general data storage environment that is accessible via FALCON-SA is available in the FALCON-SA Privacy Impact Assessment at www.dhs.gov/privacy.

Ad hoc ingests are user-driven ingests of particular data that may be relevant to a given user or group's investigative or analytical project in FALCON-SA. The nature of the data in *ad hoc* ingests varies from data collected from a commercial or public source (e.g., Internet research or from a commercial data service), to public reports of law enforcement violations or suspicious activity (tips), to digital records seized or subpoenaed during an investigation. All *ad hoc* ingests are tagged by the FALCON-SA user with the appropriate category description, and that tag controls the retention policy for that data. The *ad hoc* ingest category description list is included in the FALCON-SA Privacy Impact Assessment at www.dhs.gov/privacy.

FALCON-SA records may include some or all of the following types of personally identifiable information: Identifying and biographic data such as name and date of birth; citizenship and immigration data; border crossing data; customs import-export history; criminal history; contact information; criminal associates; family relationships; photographs and other media; and employment and education information.

FALCON-SA also contains an index, which is a numerical and alphabetical list of every word or string of numbers/characters found in the FALCON-SA database, with a reference to the electronic location where the corresponding source record is stored. FALCON-SA uses this index to conduct searches, identify relationships and links between records and data, and generate visualizations for analytic purposes. FALCON-SA also contains metadata that is created when the myriad sources of data are ingested. The metadata is used to apply access controls and other system rules (such as retention policies) to the contents of FALCON-SA. The metadata also provides important contextual information about the date the information was added to FALCON-SA and the source system where the data originated.

The data sets in FALCON-SA include tips submitted to ICE either through an online form on the ICE Web site or by calling the HSI Tip Line. These tips are created electronically using the FALCON-Tip Line interface, or may be manually entered by HSI's Cyber Crimes Center when the tips pertain to child exploitation crimes. Once HSI adjudicates the tips for action, the tips are then accessible to all HSI users via the FALCON-SA interface.

Uses of FALCON-SA

ICE HSI agents, criminal research specialists, and intelligence analysts query FALCON-SA for a variety of purposes: To conduct research that supports the production of law enforcement intelligence products; to provide lead information for investigative inquiry and follow-up; to assist in the conduct of ICE criminal, civil, and administrative investigations; to assist in the disruption of terrorist or other criminal activity; and to discover previously unknown connections among existing ICE investigations. These queries can be saved in FALCON-SA to eliminate the need to recreate them each time a user logs on.

Strong access controls and a robust audit function ensure that ICE's use of the system is predicated on homeland security, law enforcement, and law enforcement intelligence activities. This requirement is enforced by a governance group composed of leadership from HSI with oversight by ICE's legal, privacy and civil liberties offices.

While ICE previously relied on the DHS/ICE-006 ICE Intelligence Records System (IIRS) SORN, last published at 75 FR 9233 (Mar. 1, 2010), to maintain FALCON-SA records, it was determined that a separate system of records notice

will provide greater transparency and allow ICE to more accurately describe the records accessible via FALCON-SA. FALCON-Tip Line records were previously covered by the DHS/ICE-007 Alien Criminal Response Information Management (ACRIME) SORN, but the FALCON-SA SORN will now cover those records instead. This change is due to the fact that Tip Line records have migrated out of the ACRIME system into the FALCON environment and that once created, the official repository for FALCON-Tip Line records is the FALCON general data storage environment.

This SORN will cover data that is accessible via FALCON-SA's user interface only, and does not cover data that is accessed via other FALCON interfaces, such as Roadrunner and DARTTS, which are covered by the DHS/ICE-005 Trade Transparency and Analysis Records (TTAR) SORN.

Additional information about FALCON-SA can be found in the Privacy Impact Assessments published for FALCON-SA and FALCON-Tip Line, available at <http://www.dhs.gov/privacy-documents-ice>.

Consistent with DHS's information sharing mission, information stored in the DHS/ICE-016 FALCON-SA System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, ICE may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

Additionally, DHS is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act elsewhere in the **Federal Register**. This newly established system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency 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. In the Privacy Act, an

individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, and similarly, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/ICE-016 FALCON-SA System of Records. In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

DHS/ICE-016 FALCON-Search and Analysis (FALCON-SA).

SECURITY CLASSIFICATION:

Unclassified; Law Enforcement Sensitive; and For Official Use Only.

SYSTEM LOCATION:

DHS/ICE maintains records in DHS data centers. This SORN applies to all records available to users through the FALCON-SA interface. This SORN also applies to all records created through the FALCON-Tip Line interface.

SYSTEM MANAGER(S):

Assistant Director for Information Management Directorate, Homeland Security Investigations, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Washington, DC 20536.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103, 1105; 8 U.S.C. 1225(d)(3) and (d)(4)(A); 8 U.S.C. 1324a(e)(2)(C); 8 U.S.C. 1357; 8 U.S.C. 1360(b); 18 U.S.C. 2703; 19 U.S.C. 1509; 19 U.S.C. 1589a; 19 U.S.C. 1628; 21 U.S.C. 967; and 50 U.S.C. 2411(a).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to permit ICE law enforcement and homeland security personnel to search, aggregate, analyze, and visualize volumes of existing information in support of ICE's mission to enforce and investigate violations of U.S. criminal and administrative laws. FALCON-SA allows ICE HSI agents, criminal research specialists, and intelligence analysts to conduct research in order to produce law enforcement intelligence, provide lead information for investigative inquiry and follow-up, assist in the conduct of ICE investigations and the disruption of criminal (including terrorist) activity, and discover

previously unknown connections among ICE investigations.

This system of records also supports the operation of the agency's Tip Line to collect, analyze, and act on information volunteered by the public and other sources concerning suspicious and potentially illegal activity.

This system of records also supports the identification of potential criminal activity, immigration violations, and threats to homeland security. The system is used to uphold and enforce the law, and to ensure public safety.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who owned, had custody of, or arranged for the import or export of property that is seized by ICE or U.S. Customs and Border Protection (CBP);

(2) Individuals identified in TECS subject records and investigative records created by ICE and CBP, including violators or suspected violators of laws enforced or administered by ICE and CBP; individuals arrested by ICE and CBP for violations of law; witnesses associated with ICE and CBP enforcement actions; persons who own or operate businesses, property, vehicles, or other property that is in a TECS subject record; and individuals applying for a license issued by DHS or for which DHS conducts a background investigation in support of the licensing agency;

(3) Subjects of administrative actions by ICE, such as individuals who are the subject or proponent of a continued presence parole application under the Immigration and Nationality Act;

(4) Subjects of ICE threat assessments such as gang members;

(5) Aliens arrested, detained, and/or removed by ICE, or issued a notice to appear in immigration court, under the Immigration and Nationality Act;

(6) Aliens who are the subject of an ICE immigration detainer or request for notification;

(7) ICE personnel or personnel from partner law enforcement agencies who are mentioned in significant incident reports that concern law enforcement (LE) operations, injuries to law enforcement personnel, or other significant incidents reported within ICE;

(8) Individuals who are associated with an ICE investigation, have provided information to ICE during an investigation, or whose data is part of records or other materials collected, compiled, or seized during an investigation, including victims, witnesses, associates, and sources;

(9) Individuals alleged to be involved in suspicious or illegal activity, and the

individuals reporting such activity to ICE;

(10) Specially Designated Nationals, as defined by 31 CFR 500.306;

(11) Individuals identified on other denied parties or screening lists; and

(12) Government personnel associated with official requests by another agency for ICE assistance, or associated with any of the foregoing categories of individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Biographic and other identifying information, including names; dates of birth; places of birth; Social Security numbers (SSN); Tax Identification Numbers (TIN); Exporter Identification Numbers (EIN); passport information (number and country of issuance); citizenship; nationality; location and contact information (*e.g.*, home, business, and email addresses and telephone numbers); and other identification numbers (*e.g.*, Alien Registration Number, driver's license number).

(2) Financial data, including data reported pursuant to the Bank Secrecy Act (*e.g.*, certain transactions over \$10,000) and other financial data obtained via official investigations, legal processes, or legal settlements. Financial data includes, but is not limited to, bank account numbers, transaction numbers, and descriptions or value of financial transactions.

(3) Licensing information related to applications by individuals or businesses to hold or retain a customs broker's license, operate a customs-bonded warehouse, or be a bonded carrier or bonded cartman.

(4) Various internal operational reports, including reports of significant incidents and operations; reports concerning prospective enforcement activity; requests for assistance from other law enforcement agencies; agency intelligence reports; and reports of third-agency visits to ICE detention facilities.

(5) Law enforcement records, including TECS subject records and investigative records related to an ICE or CBP law enforcement matter, information obtained from the U.S. Department of the Treasury's Specially Designated Nationals List, visa security information, and other trade-based and financial sanction screening lists. Law enforcement data includes, but is not limited to, names; aliases; business names; addresses; dates of birth; places of birth; citizenship; nationality; passport information; SSNs; TINs; driver's license numbers; and vehicle, vessel, and aircraft information.

(6) Reports of fines, penalties, forfeitures, and seizure incidents.

(7) Records of call transactions and subscriber information obtained during the course of an ICE criminal investigation.

(8) Tips concerning illegal or suspicious activity from the public and other law enforcement agencies.

(9) Continued presence parole application records.

(10) Open source information—news articles or other data available to the public on the Internet or in public records, including publicly available information from social media.

(11) Commercially available data—public and proprietary records available for a subscription.

(12) Cargo and border crossing data—inbound/outbound shipment records and border crossing information from CBP's Automated Targeting System. NOTE: Passenger Name Record (PNR) data may not be uploaded into this system of records.

(13) Criminal information, including lookouts, warrants, criminal history records, and other civil or criminal investigative information provided by other law enforcement agencies.

(14) Information from foreign governments or multinational organizations such as INTERPOL or Europol—including criminal history; immigration data; passenger, vehicle, vessel entry/exit data; passport information; vehicle, vessel, and licensing records; shipment records; telephone records; intelligence reports; investigative leads and requests; and wants, warrants, and lookouts.

(15) Finished intelligence reports from DHS or other agencies.

(16) Evidentiary information concerning evidence seized or otherwise lawfully obtained during the course of an ICE investigation, including business records, third-agency records, public records (courts, *etc.*), transcripts of interviews/depositions, or materials seized or obtained via subpoena or other lawful process.

(17) Trade analysis data, including trade identifier numbers (*e.g.*, for manufacturers importers, exporters, and customs brokers) and bill of lading data (*e.g.*, consignee names and addresses, shipper names and addresses, container numbers, carriers); other financial data required for the detection and analysis of financial irregularities and crimes.

(18) Tip data concerning child exploitation violations, such as the biographical data of the suspect or the suspect's online identity information (user ID). Internet Service Provider data, domain name, credit card number and Internet Protocol (IP) address, Internet

subscriber data (name, subscriber number, billing address, IP address, payment method, and email addresses), a log of subscriber activity, or other information such as motor vehicle data, SSN, and other information collected during the course of vetting the tip from sources such as Government databases, and open source and commercially-available data, as previously described.

RECORD SOURCE CATEGORIES:

Records are obtained from other ICE and DHS record systems as well as records or information from other agencies, DHS partners, and the public. Public records and commercial data may also be added to the system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of

information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To Federal, State, local, tribal, territorial, foreign or international agencies, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual; the issuance, grant, renewal, suspension, or revocation of a security clearance, license, contract, grant, or other benefit; or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit.

I. To Federal, State, local, tribal, territorial, international, or foreign criminal, civil, or regulatory law enforcement authorities when the information is necessary for

collaboration, coordination, and deconfliction of investigative matters, prosecutions, and/or other law enforcement actions to avoid duplicative or disruptive efforts and to ensure the safety of law enforcement officers who may be working on related law enforcement matters.

J. To international, foreign, intergovernmental, and multinational government agencies, authorities, and organizations in accordance with law and formal or informal international arrangements.

K. To Federal, State, local, tribal, territorial, or foreign government agencies or organizations, or international organizations, lawfully engaged in collecting law enforcement intelligence, whether civil or criminal, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

L. To an organization or individual in either the public or private sector, either foreign or domestic, when there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property.

M. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

N. To other Federal law enforcement agencies, the disclosure of call detail records to coordinate criminal investigations, specifically to assist in the identification of investigations that may be related, as well as the deconfliction of cases.

O. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/ICE stores records in this system electronically or on paper in secure

facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name or other personal identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The retention period for information contained in FALCON-SA varies depending on the type of data. Routinely ingested DHS-owned data is retained in accordance with the approved record retention schedule of the source system. Data uploaded to FALCON-SA in an *ad hoc* manner is associated with a case file number, to the extent possible, and retained consistent with the retention of the case file. When there is no case file number, the data is retained for 20 years. FALCON-SA metadata and index data are retained for the same length of time as the record or data element they originate from or describe.

FALCON-SA is the official repository for tip information at ICE and does not obtain these records from another internal database source. ICE records created via the FALCON-Tip Line application are fed into FALCON-SA's general data storage environment thereafter. Other tip information may be entered into FALCON-SA manually by a specialized unit within ICE when the tips pertain to child exploitation crimes. Tip Line records will be retained for ten (10) years from the date of the tip. Tip records concerning child exploitation crimes will be retained for 75 years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/ICE safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. ICE has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act, and the Judicial Redress Act if applicable, because it is a law enforcement system. However, DHS and ICE will consider

individuals' requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the U.S. Immigration and Customs Enforcement Freedom of Information Act (FOIA) Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "FOIA Contact Information." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528-0655. Even if neither the Privacy Act nor the Judicial Redress Act provides a right of access, certain records about you may be available under the Freedom of Information Act.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, <http://www.dhs.gov/foia> or 1-866-431-0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records. Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest the accuracy of records in this system of records should submit these requests to the ICE Privacy & Records Office. Requests must comply with verification of identity requirements set forth in Department of Homeland Security Privacy Act regulations at 6 CFR 5.21(d). Please specify the nature of the complaint and provide any supporting documentation. By mail (please note substantial delivery delays exist): ICE Privacy & Records Office, 500 12th Street SW., Mail Stop 5004, Washington, DC 20536. By email: ICEPrivacy@ice.dhs.gov. Please contact the Privacy & Records Office with any questions about submitting a request or complaint at 202-732-3300 or ICEPrivacy@ice.dhs.gov.

NOTIFICATION PROCEDURES:

See "Record Access procedure."

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), has exempted this system from the following provisions of the Privacy Act: 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); and (g).

When FALCON-SA receives a record from another system that is exempt from the Privacy Act, DHS will claim the same exemptions as are claimed for the original system of records from which the record originated and also claims any additional exemptions set forth here.

Dated: May 1, 2017.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2017-09025 Filed 5-3-17; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Agency Information Collection Activity Under OMB Review: TSA Canine Training Center Adoption Application

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for

review and approval under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on December 13, 2016, 81 FR 89963. The collection involves gathering information from individuals who wish to adopt a TSA canine through the TSA Canine Training Center (CTC) Adoption Program.

DATES: Send your comments by June 5, 2017. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011; telephone (571) 227-2062; email TSAPRA@tsa.dhs.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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 OMB control number. The ICR documentation is available at <http://www.reginfo.gov>. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: TSA Canine Training Center Adoption Application.

Type of Request: New collection.

OMB Control Number: 1652-XXXX.

Form(s): TSA Form 433.

Affected Public: Individuals seeking to adopt a TSA canine.

Abstract: The TSA Canine Program is a Congressionally-mandated program that operates pursuant to section 110(e)(3) of the Aviation and Transportation Security Act (ATSA), Public Law 107-71 (115 Stat. 597, Nov. 19, 2001); the Homeland Security Act of 2002, Public Law 107-296 (116 Stat. 2135, Nov. 25, 2002); and the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53 (121 Stat. 266, Aug. 3, 2007). The TSA Canine Program developed the TSA CTC to train and deploy explosive detection canine teams to Federal, State, and local agencies in support of daily activities that protect the transportation domain. TSA created the TSA CTC Adoption Program under the authority of 41 CFR 102-36.35(d) and 102-36.365 to find suitable individuals or families to adopt and provide good homes to canines who do not graduate from the training program. Individuals seeking to adopt a TSA canine must complete the TSA CTC Adoption Application. This collection of information allows the TSA CTC to collect personal information from the applicants to determine their suitability to adopt a TSA canine.

Number of Respondents: 300.

Estimated Annual Burden Hours: An estimated 50 hours annually.

Dated: April 28, 2017.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2017-09038 Filed 5-3-17; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA-2014-0001]

Intent To Request Revision From OMB of One Current Public Collection of Information: TSA Pre✓® Application Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved

Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0059, abstracted below, that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR, which will be submitted to the Office of Management and Budget (OMB) for review following the required public comment periods, describes the nature of the information collection and its expected burden. The collection involves the voluntary submission of biographic and biometric information that TSA uses to verify identity and conduct a security threat assessment for the TSA Pre✓® Application Program. The security threat assessment compares an applicant's information against criminal history, immigration, intelligence, and regulatory violations databases to determine if the person poses a low risk to transportation or national security and should be eligible for expedited screening through TSA Pre✓® lanes at airports.

DATES: Send your comments by July 3, 2017.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227-2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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 OMB control number. The ICR documentation is available at <http://www.reginfo.gov>. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology.

Information Collection Requirement

Pursuant to the statutory authorities explained below, the Transportation Security Administration (TSA) has implemented a voluntary enrollment program for individuals to apply for the TSA Pre✓® Application Program. Section 109(a)(3) of the Aviation and Transportation Security Act (ATSA), Public Law 107-71 (115 Stat. 597, 613, Nov. 19, 2001), codified at 49 U.S.C. 114 note) provides TSA with the authority to “establish requirements to implement trusted passenger programs and use available technologies to expedite security screening of passengers who participate in such programs, thereby allowing security screening personnel to focus on those passengers who should be subject to more extensive screening.” In addition, TSA has express, unlimited statutory authority to establish and collect a fee for any registered traveler program by publication of a notice in the **Federal Register**, as outlined in the Department of Homeland Security Appropriations Act, 2006, Public Law 109-90 (119 Stat. 2064, 2088-89, Oct. 18, 2005).

Under the TSA Pre✓® Application Program, individuals may submit biographic and biometric information directly to TSA that TSA uses to conduct a security threat assessment (STA) of criminal, immigration, intelligence, and regulatory violation databases. TSA uses the STA results to decide if an individual poses a low risk to transportation or national security. TSA issues approved applicants a known traveler number (KTN) that they may use when making travel reservations. Airline passengers who submit a KTN when making airline reservations are eligible for expedited screening on flights originating from U.S. airports with TSA Pre✓® lanes.¹ TSA uses the traveler's KTN and other information during passenger prescreening to verify that the individual traveling matches the information on TSA's list of known travelers and to confirm TSA Pre✓® expedited screening eligibility.

Interested applicants must provide certain minimum required data elements, including, but not limited to, name, date of birth, gender, address,

contact information, country of birth, images of identity documents, proof of citizenship or immigration status, and biometrics via a secure interface. TSA uses this information to conduct a STA, make a final eligibility determination for the TSA Pre✓® Application Program, and verify the identities of TSA Pre✓® enrolled and approved individuals when they are traveling.

TSA sends the applicants' fingerprints and associated information to the Federal Bureau of Investigation (FBI) for the purpose of comparing their fingerprints to other fingerprints in the FBI's Next Generation Identification (NGI) system or its successor systems including civil, criminal, and latent fingerprint repositories. The FBI may retain applicants' fingerprints and associated information in NGI after the completion of their application and, while retained, their fingerprints may continue to be compared against other fingerprints submitted to or retained by NGI. TSA will also transmit applicants' biometrics for enrollment into the Department of Homeland Security Automated Biometrics Identification System (IDENT).

TSA is revising the collection of information to expand enrollment options and the potential use of biographic and biometric (e.g., fingerprints, iris scans, and/or photo) information. This revision would facilitate use of the STA for comparability determinations, such as allowing a TSA Pre✓® Application Program applicant to participate in programs with a comparable STA, such as the Hazardous Materials Endorsement Threat Assessment Program, or obtain a Transportation Worker Identification Credential (TWIC) without requiring an additional STA. Also, TSA may use applicants' biometric information in TSA's Biometric Authentication Technology (BAT) effort, which will use biometrics in place of credentials and boarding passes to authenticate the identity of TSA Pre✓® Application Program applicants at airport checkpoints.

When the STA is complete, TSA makes a final determination on eligibility for the TSA Pre✓® Application Program and notifies applicants of its decision. Most applicants generally should expect to receive notification from TSA within two to three weeks of the submission of their completed applications. If initially deemed ineligible by TSA, applicants will have an opportunity to correct cases of misidentification or inaccurate criminal records. Applicants must submit a correction of any information they believe to be inaccurate within 60

days of issuance of TSA's letter. If a corrected record is not received by TSA within the specified amount of time, the agency may make a final determination to deny eligibility. Individuals who TSA determines are ineligible for the TSA Pre✓® Application Program will be screened at airport security checkpoints pursuant to standard screening protocols.

The TSA Pre✓® Application Program enhances aviation security by permitting TSA to better focus its limited security resources on passengers who are more likely to pose a threat to aviation, while also facilitating and improving the commercial aviation travel experience for the public. Travelers who choose not to enroll in this initiative are not subject to any limitations on their travel because of their choice; they will be processed through normal TSA screening before entering the sterile areas of airports. TSA also retains the authority to perform standard or other screening on a random basis on TSA Pre✓® Application Program participants and any other travelers authorized to receive expedited physical screening.

TSA estimates that there will be 2,497,903 annualized enrollments over a three-year period. This estimate is based on current and projected enrollment with TSA's existing program. TSA estimates that there will be 4,717,423 annualized hours based on a three-year projection. TSA estimates an average of 1.888533 hours per applicant to complete the enrollment process, which includes providing biographic and biometric information to TSA (via an enrollment center or pre-enrollment options) and the burden for any records correction for the applicant, if applicable. TSA estimates the annualized cost burden will be \$160,628,269 based on a three-year projection. The applicant fee remains \$85, which covers TSA's program costs, TSA's enrollment vendor's costs, and the FBI fee for the criminal history records check.

Dated: April 28, 2017.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2017-09030 Filed 5-3-17; 8:45 am]

BILLING CODE 9110-05-P

¹ Passengers who are eligible for expedited screening through a dedicated TSA Pre✓® lane typically will receive more limited physical screening, e.g., will be able to leave on their shoes, light outerwear, and belt; to keep their laptop in its case; and to keep their 3-1-1 compliant liquids/gels bag in a carry-on. For airports with TSA Pre✓® lanes, see <https://www.tsa.gov/precheck/map>.

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR–5994–N–02]

**Operations Notice for the Expansion of
the Moving To Work Demonstration
Program Solicitation of Comment;
Waiver Revision and Reopening of
Comment Period**

AGENCY: Office of Public and Indian
Housing, HUD.

ACTION: Notice.

SUMMARY: This notice revises the parameters of three waiver provisions and reopens the comment period for HUD’s January 23, 2017 **Federal Register** notice entitled “Operations Notice for the Expansion of the Moving To Work Demonstration Program Solicitation of Comment.”

DATES: *Comment due date:* The comment deadline for the January 23, 2017 notice, as revised by this notice, is June 5, 2017.

FOR FURTHER INFORMATION CONTACT: Marianne Nazzaro, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC 20410; email address mtw-info@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The MTW demonstration program was established under Section 204 of Title II of section 101(e) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134 (approved April 26, 1996). The demonstration was significantly expanded under the 2016 MTW expansion statute, Section 239 of Division L, Title IV of the Consolidated Appropriations Act, 2016, Public Law 114–113 (approved December 18, 2015) (2016 MTW expansion). The 2016 MTW expansion authorizes HUD to expand the MTW demonstration program from the current level of 39 PHAs to an additional 100 PHAs over a period of seven years.

On January 23, 2017 (82 FR 8056), HUD published in the **Federal Register** a notice that sought comment on the proposed methods of operations for PHAs joining the MTW demonstration through the 2016 MTW expansion. Included in that notice are appendices that list available waivers, and the parameters of those waivers. These include Appendix A, “General Waivers” (82 FR 8071 *et seq.*), and Appendix B, “Conditional Waivers” (82 FR 8076 *et*

seq.). General waivers are those that will be granted without HUD review beyond the MTW application review.

Conditional waivers are those waivers that will be granted following additional HUD review and approval.

This notice makes a revision to one of the Appendix A waivers, and two of the Appendix B waivers.

II. Revisions to Parameters of Waivers

A. Appendix A: General Waivers

For the waiver entitled “Authorizations Related to Family Self Sufficiency,” one of the available activities listed in the fourth column is: “The Agency is authorized to develop its own recruitment and selection procedures for its FSS program(s).” In the fifth column, “Parameters,” the corresponding statement as originally published (82 FR 8072 (January 23, 2017)) reads:

Recruitment, eligibility, and selection policies and procedures must be consistent with the Department’s nondiscrimination and equal opportunity requirements. Agency may not require families to participate in the program as a condition of receiving housing assistance. Agency may not include current work status, work history and/or source of income as part of the selection criteria. “Family” is not limited to families with a member who is able to work full time, but is defined broadly so as not to exclude families with a member who is disabled but able to work, disabled but unable to work, or working as a caregiver for a family member with a disability.

This statement is revised by this notice to remove the second sentence and add two new sentences in its place, so that the statement reads (emphasis added):

Recruitment, eligibility, and selection policies and procedures must be consistent with the Department’s nondiscrimination and equal opportunity requirements. *A PHA may make FSS participation mandatory by waiving the statutory and regulatory definition of FSS family or participating family which is “a family that resides in public housing or receives assistance under the rental certificate or rental voucher programs, and that elects to participate in the FSS program” (24 CFR 984.103(b)). The Agency may not make FSS participation mandatory for individuals that do not meet the definition of an eligible family at Section 23(n)(3) of the U.S. Housing Act of 1937 (1937 Act), 42 U.S.C. 1437u(n)(3), and those exempted from the Community Service Requirement under Section 12(c)(2)(A), (B), (D) and (E) of the 1937 Act, 42 U.S.C. 1437j(c)(2)(A), (B), (D), and (E). If the Agency requires FSS participation as a condition for housing subsidy, the Agency must develop and adopt a non-compliance policy and a hardship exemption policy and conduct an impact analysis in accordance with MTW*

guidance prior to the implementation of the activity. If an Agency terminates the housing subsidy or tenancy of a family for alleged violation of mandatory FSS participation, it will provide a notice at least 60 days prior to the date of termination informing the family that it is entitled to a hearing under the procedures stated in the Agency’s Grievance Procedure (24 CFR part 966, subpart B). Any resulting termination of assistance or tenancy must be based on the noncompliance policy, and there shall be no termination of tenancy or assistance if such action would result in hardship for the family under the hardship policy. The noncompliance policy may not include minor infractions of FSS as a basis for termination of tenancy or subsidy. An Agency may not include current work status, work history and/or source of income as part of the selection criteria. “Family” is not limited to families with a member who is able to work full time, but is defined broadly so as not to exclude families with a member who is disabled but able to work, disabled but unable to work, or working as a caregiver for a family member with a disability.

B. Appendix B: Conditional Waivers

For waiver 3 under the “Activities Related to Public Housing” heading, entitled “PH—Work Requirements,” the first sentence of the “Available Activities” statement as originally published (82 FR 8079 (January 23, 2017)) reads:

Work Requirement (PH): The Agency may implement a work requirement for public housing residents between the ages of 18 and 54.

This sentence is revised to read:

Work Requirement (PH): The Agency may implement a work requirement for public housing residents between the ages of 18 and 61.

For waiver 6 under the “Activities Related to Housing Choice Vouchers” heading, entitled “HCV & PBV—Work Requirements,” the first sentence of the “Available Activities” statement as originally published (82 FR 8079 (January 23, 2017)) reads:

Work Requirement (HCV & PBV): The Agency may implement a work requirement for HCV and PBV residents between the ages of 18 and 54.

This sentence is revised to read:

Work Requirement (HCV & PBV): The Agency may implement a work requirement for HCV and PBV residents between the ages of 18 and 61.

Dated: May 2, 2017.

Jemine A. Bryon,

General Deputy Assistant Secretary for Public and Indian Housing.

APPENDIX A EXCERPT

[Note: Comments are being accepted on the original notice and appendices published at 82 FR 8056 (January 23, 2017) until the comment deadline in this notice. These excerpts from Appendices A and B are provided to show the context of the changes described in this notice]

No.	Waiver name	Waiver description	Regulations waived	Available activities	Parameters
Activities Related to Public Housing and Housing Choice Vouchers					
3	Authorizations Related to Family Self Sufficiency.	The Agency is authorized to operate any of its existing self-sufficiency and training programs, including its Family Self-Sufficiency (FSS) Program and any successor programs exempt from certain HUD program requirements. If the Agency receives dedicated funding for an FSS coordinator, such funds must be used to employ a self-sufficiency coordinator. In developing and operating such programs, the Agency is authorized to establish strategic relationships and partnerships with local private and public agencies and service providers to leverage expertise and funding. In implementing this waiver, the Agency must execute a contract of participation, or other locally developed agreement, that is at least 5 years but no more than 10 years. However, notwithstanding the above, any funds granted pursuant to a competition must be used in accordance with the NOFA and the approved application and work plan.	Certain provisions of Section 23 of the 1937 Act and 24 CFR 984.	<p><i>Waive Operating a Required FSS Program (Both):</i> The Agency is authorized to waive its requirement to operate the traditional FSS program.</p> <p><i>Alternative to Program Coordinating Committee (Both):</i> The Agency is authorized to create an alternative structure for securing local resources to support an FSS program.</p> <p><i>Alternative Family Selection Procedures (Both):</i> The Agency is authorized to develop its own recruitment and selection procedures for its FSS program(s).</p> <p><i>Modify or Eliminate the Contract of Participation (Both):</i> The Agency is authorized to modify the terms of, or eliminate the contract of participation, in lieu of a local form.</p>	<p>Recruitment, eligibility, and selection policies and procedures must be consistent with the Department's nondiscrimination and equal opportunity requirements. A PHA may make FSS participation mandatory by waiving the statutory and regulatory definition of FSS family or participating family which is "a family that resides in public housing or receives assistance under the rental certificate or rental voucher programs, and that elects to participate in the FSS program" (24 CFR 984.103(b)). The Agency may not make FSS participation mandatory for individuals that do not meet the definition of an eligible family at Section 23(n)(3) of the U.S. Housing Act of 1937 (1937 Act) (42 U.S.C. 1437u(n)(3)), and those exempted from the Community Service Requirement under Section 12(c)(2)(A), (B), (D) and (E) of the 1937 Act, 42 U.S.C. 1437j(c)(2)(A), (B), (D), and (E). If the Agency requires FSS participation as a condition for housing subsidy, a hardship policy and impact analysis must be developed and adopted in accordance with MTW guidance prior to the implementation of the activity. If an Agency terminates the housing subsidy or tenancy of a family for alleged violation of mandatory FSS participation, the family will be entitled to a hearing under the Agency's Grievance Procedure (24 CFR part 966, subpart B). An Agency may not include current work status, work history and/or source of income as part of the selection criteria. "Family" is not limited to families with a member who is able to work full time, but is defined broadly so as not to exclude families with a member who is disabled but able to work, disabled but unable to work, or working as a caregiver for a family member with a disability.</p> <p>The Agency may modify the terms of the contract of participation to align with adjustments made to its FSS program(s) using MTW flexibility. Further, the Agency may discontinue use of the contract of participation and instead employ a locally-developed agreement that codifies the terms of participation.</p>

APPENDIX A EXCERPT—Continued

[Note: Comments are being accepted on the original notice and appendices published at 82 FR 8056 (January 23, 2017) until the comment deadline in this notice. These excerpts from Appendices A and B are provided to show the context of the changes described in this notice]

No.	Waiver name	Waiver description	Regulations waived	Available activities	Parameters
				<p><i>Policies for Addressing Increases in Family Income (Both):</i> The Agency is authorized to set its own policies for addressing increases in family income during participation in the FSS program.</p> <p><i>Calculating FSS Credits (Both):</i> The Agency is authorized to create alternative methods for computing the family's FSS credit.</p> <p><i>Disbursement of Savings (Both):</i> The Agency may set its own policies for when savings funds can be disbursed to participants.</p>	<p>Consistent with the goals and structure of its MTW FSS program, the Agency can set policies for whether income increases are recognized for purposes of increasing rent or changing the amount of funds moved to escrow/savings through the program. The Agency may not use income increases during participation in the FSS program to change a family's eligibility status for purposes of participation in the FSS program or for the receipt public housing or HCV assistance.</p> <p>The Agency may set policies to defer income increases to savings OR to allow participants to earn savings deposits based on meeting certain program milestones. Such policies must be made clear to participants in writing prior to starting their participation in the program.</p> <p>Consistent with the goals and structure of its MTW FSS program, the Agency can set policies for when savings are disbursed to participants. This could mean all funds are disbursed at once, or at certain key points of participation. Such policies must be made clear to participants in writing prior to starting their participation in the program.</p>

APPENDIX B EXCERPT

No.	Waiver name	Waiver description	Regulations waived	Available activities	Parameters
Activities Related to Public Housing					
3	PH—Work Requirements.	The Agency is authorized to implement a requirement that a specified segment of its public housing residents work as a condition of tenancy subject to subject to all applicable Fair Housing Requirements and the mandatory admission and prohibition requirements imposed by sections 576–578 of the Quality Housing and Work Responsibility Act of 1998 and Section 428 of Public Law 105–276. Those individuals exempt from the Community Service Requirement in accordance with Section 12(c)(2)(A), (B), (D) and (E) of the 1937 Act are also exempt from the Agency’s work requirement.	Certain provisions of Section 3 of the 1937 Act and 24 CFR 960.206.	<i>Work Requirement (PH):</i> The Agency may implement a work requirement for public housing residents between the ages of 18 and 61. The requirement shall be no less than 15 hours of work per week and no more than 30 hours of work per week. Work requirements shall not be applied to exclude, or have the effect of excluding, the admission of or participation by persons with disabilities or families that include persons with disabilities. Work requirements shall not apply to person with disabilities or families that include persons with disabilities. However, persons with disabilities and families that include persons with disabilities must have equal access to the full range of program services and other incentives.	Residents must have the opportunity to utilize the provisions of the Agency’s Grievance Procedure to resolve a dispute regarding a determination that a resident has failed to comply with the work requirement. The Agency must update its ACOP to include a description of the circumstances in which residents shall be exempt for the requirement and hardship policies. The ACOP should include a description of what is considered work as well as other activities that shall be considered acceptable substitutes for work. Services, or referrals to services, must be provided by the Agency to support preparing families to comply with this requirement. The hardship policy in the ACOP should apply to residents who are actively trying to comply with the Agency’s work requirement, but are having difficulties obtaining work or an acceptable substitute. The ACOP should also describe the consequences of failure to comply with the work requirement. Agencies may not implement the PH-Work Requirements Waiver on individuals exempted from the Community Service Requirement under Section 12(c)(2)(A), (B), (D) and (E). While the work requirements do not apply to persons with disabilities or families that include a person with disabilities, such persons and families are not precluded from working or engaging in substitute activities (such as caring for a family member who is disabled). Regardless of the level of engagement with work or substitute activities, persons and families that include persons with disabilities must have equal access to services or referral to services to support their efforts to obtain work or an acceptable substitute, and any other services or other incentives associated with the program.

APPENDIX B EXCERPT—Continued

No.	Waiver name	Waiver description	Regulations waived	Available activities	Parameters
Activities Related to Housing Choice Vouchers					
6	HCV & PBV—Work Requirements.	The Agency is authorized to implement a requirement that a specified segment of its HCV and PBV residents work as a condition of tenancy subject to all applicable Fair Housing Requirements.	Certain provisions of Sections 8(o)(7)(a), 8(o)(13)(F), and 8(o)(13)(G) of the 1937 Act and 24 CFR 982.303, 982.309 and 983 Support F.	<i>Work Requirement (HCV & PBV):</i> The Agency may implement a work requirement for HCV and PBV residents between the ages of 18 and 61. The requirement shall be no less than 15 hours of work per week and no more than 30 hours of work per week. The Agency shall provide supportive services to assist families obtain employment or an acceptable substitute. Work requirements shall not be applied to exclude, or have the effect of excluding, the admission of or participation by persons with disabilities or families that include persons with disabilities. Work requirements shall not apply to persons with disabilities or families that include persons with disabilities. However, persons with disabilities and families that include persons with disabilities must have equal access to the full range of program services and other incentives.	The Agency must update its Administrative Plan to include a description of the circumstances in which families shall be exempt from the requirement. The Administrative Plan must also include a hardship policy. The Administrative Plan should include a description of what is considered work as well as other activities that shall be considered acceptable substitutes for work. Services, or referrals to services, must be provided by the Agency to support preparing families for the termination of assistance. The hardship policy in the Administrative Plan should apply to families who are actively trying to comply with the Agency's work requirement, but are having difficulties obtaining work or an acceptable substitute. The Administrative Plan should also describe the consequences of failure to comply with the work requirement.

[FR Doc. 2017-09139 Filed 5-3-17; 8:45 am]
 BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[17X LLWO600000.L18200000.XP0000]

Albuquerque District Resource Advisory Council; Postponement of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The May 1, 2017, Albuquerque District Resource Advisory Council meeting has been postponed.

DATES: The meeting was scheduled for May 1, 2017, in Socorro, New Mexico, and will be rescheduled at a later date. We will publish a future notice with the new meeting date and location.

FOR FURTHER INFORMATION CONTACT: Jack River, Forester, BLM Albuquerque District Office, (505) 761-8755; or by email at jriver@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to leave a message or question for Mr. River. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member council advises the Secretary of

the Interior, through the BLM, on a variety of planning and management issues associated with public land management in BLM's Albuquerque District. Additional information is available in the meeting notice published on April 10, 2017 (82 FR 17277).

Authority: 5 U.S.C. Appendix 2.

Patrick Wilkinson,
Acting Assistant Director, Communications.

[FR Doc. 2017-09006 Filed 5-3-17; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[17X LLWO600000.L18200000.XP0000]

Dominguez-Escalante National Conservation Area Advisory Council, Colorado; Postponement of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The May 3, 2017, Dominguez-Escalante National Conservation Area (NCA) Advisory Council meeting has been postponed.

DATES: The meeting was scheduled for May 3, 2017, in Delta, Colorado, and will be rescheduled at a later date. We will publish a future notice with the new meeting date and location.

FOR FURTHER INFORMATION CONTACT:

Collin Ewing, Advisory Council designated Federal Official, (970) 244-3049; or by email at cewing@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to leave a message or question for Mr. Ewing. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the Resource Management Plan process for the Dominguez-Escalante NCA and Dominguez Canyon Wilderness. Additional information is available in the meeting notice published on April 12, 2017 (82 FR 17683).

Authority: 5 U.S.C. Appendix 2.

Patrick Wilkinson,
Acting Assistant Director, Communications.

[FR Doc. 2017-09009 Filed 5-3-17; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[17X LLWO60000.L1820000.XP0000]

John Day—Snake Resource Advisory Council, Oregon; Postponement of Meeting**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.**SUMMARY:** The May 18 and 19, 2017, John Day—Snake Resource Advisory Council meeting has been postponed.**DATES:** The meeting was scheduled for May 18 and 19, 2017, in Baker City, Oregon, and will be rescheduled at a later date. We will publish a future notice with the new meeting date and location.**FOR FURTHER INFORMATION CONTACT:** Lisa Clark, Public Affairs Officer, BLM Prineville District Office, (541) 416-6700; or by email at lmclark@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to leave a message or question for Ms. Clark. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.**SUPPLEMENTARY INFORMATION:** The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in central and eastern Oregon. Additional information is available in the meeting notice published on April 13, 2017 (82 FR 17852).**Authority:** 5 U.S.C. Appendix 2.**Patrick Wilkinson,***Acting Assistant Director, Communications.*

[FR Doc. 2017-09005 Filed 5-3-17; 8:45 am]

BILLING CODE 4310-84-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 3221; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to 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 § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Sony Corporation; Sony Storage Media Solutions Corporation; Sony Storage Media Manufacturing Corporation; Sony DADC US Inc.; and Sony Latin America Inc. on April 28, 2017. 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 Media Manufacturing Co., Ltd. of Japan; Fujifilm Holdings America Corporation of Valhalla, NY; and Fujifilm Recording Media U.S.A., Inc. of Bedford, MA. The complainants request 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. 3221") 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: May 1, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–09017 Filed 5–3–17; 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 Digital Cameras, Software, and Components Thereof, DN 3220*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to 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 § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Carl Zeiss AG and ASML Netherlands B.V. on April 28, 2017. 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 digital cameras, software, and components thereof. The complaint names as respondents Nikon Corporation of Japan; Sendai Nikon Corporation of Japan; Nikon Inc. of

Melville, NY; Nikon (Thailand) Co., Ltd. of Thailand; Nikon Imaging (China) Co., Ltd of China; and PT Nikon Indonesia of Indonesia. The complainants request that the Commission issue a limited exclusion order and cease and desist orders.

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. 3220”) 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: May 1, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–09016 Filed 5–3–17; 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–1054]

Certain Height-Adjustable Desk Platforms and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 30, 2017, under section 337 of the Tariff Act of 1930, as amended, on behalf of Varidesk LLC of Coppell, Texas. A letter supplementing the complaint was filed on April 21, 2017. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain height-adjustable desk platforms and components thereof by reason of infringement of U.S. Patent No. 9,113,703 (“the ’703 patent”); U.S. Patent No. 9,277,809 (“the ’809 patent”); and U.S. Patent No. 9,554,644 (“the ’644 patent”). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <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>.

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Docket Services Division, U.S. International Trade

Commission, Katherine Hiner, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2017).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 28, 2017, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain height-adjustable desk platforms and components thereof by reason of infringement of one or more of claims 1, 2, 4, and 6–11 of the ’703 patent; claims 1–3, 5–18, and 22–27 of the ’809 patent; and claims 1–27, 29, 30, and 33–36 of the ’644 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Varidesk LLC, 1221 South Belt Line Road, #500, Coppell, TX 75019

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Lumi Legend Corporation, 22/F., Building 1, Lisi Plaza, Huifeng East Road, Ningbo, China 315100
 Innovative Office Products LLC, 100 Kuebler Road., Easton, Pennsylvania 18040
 Ergotech Group LLC, 100 Kuebler Road, Easton, Pennsylvania 18040
 Transform Partners LLC (dba Mount-It!), 9520 Black Mountain Rd St D, San Diego, CA 92126–4532
 Monoprice, Inc., 11701 6th Street, Rancho Cucamonga, CA 91730
 Ningbo Loctek Visual Technology Corporation, Science & Technology Zone, Jiangshan Town, Yinzhou District, Ningbo, China 315191
 Zhejiang Loctek Smart Drive Technology Co., Ltd., Science & Technology Zone, Jiangshan Town, Yinzhou District, Ningbo, China 315191
 Loctek Inc., 47618 Kato Road, Fremont, CA 94538
 Zoxou, Inc., 47618 Kato Road, Fremont, CA 94538

Flexispot, 4569 Las Positas Rd, Suite A, Livermore, CA 94551

The Office of Unfair Import Investigations will not participate as a party in this investigation; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 1, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017-09018 Filed 5-3-17; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-982]

Certain RF Capable Integrated Circuits and Products Containing the Same: Commission Determination Not To Review an Initial Determination Granting Complainant's Unopposed Motion To Terminate the Investigation in Its Entirety Based Upon Withdrawal of the Complaint; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 28) of the presiding administrative law judge ("ALJ") granting an unopposed motion to terminate the investigation in its entirety based upon withdrawal of the complaint.

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 at <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 Inv. No. 337-TA-982 on January 21, 2016, based on a complaint filed by ParkerVision, Inc. of Jacksonville, Florida ("ParkerVision"). 81 FR 3474-75 (Jan. 21, 2016). 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 RF capable integrated circuits and products containing the same by reason of infringement of certain claims of U.S. Patent No. 8,571,135 ("the '135 patent"); U.S. Patent No. 6,879,817 ("the '817 patent"); U.S. Patent No. 7,929,638 ("the '638 patent"); and U.S. Patent No. 9,118,528. The notice of investigation named the following respondents: Apple Inc. of Cupertino, California; LG Electronics, Inc. of Seoul, Republic of Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; LG Electronics MobileComm U.S.A., Inc. of San Diego, California; Qualcomm Incorporated of San Diego, California; Samsung Electronics Co., Ltd. of Suwon-Shi, Republic of Korea; Samsung

Electronics America, Inc. of Ridgefield Park, New Jersey; and Samsung Semiconductor, Inc. of San Jose, California. *Id.* at 3474. The Office of Unfair Import Investigations is also a party to the investigation. *Id.* at 3475.

After institution, LG Electronics U.S.A., Inc. and the Samsung respondents separately were terminated from the investigation. *See* Notice (Aug. 18, 2016); Notice (Aug. 19, 2016). The asserted claims of the '135 patent, the '817 patent, and the '638 patent were also terminated from the investigation. *See* Notice (Feb. 22, 2017); Notice (Sept. 7, 2016).

On March 12, 2017, ParkerVision moved to terminate the investigation in its entirety based upon withdrawal of the complaint. On March 23, 2017, the Commission investigative attorney filed a response in support of the motion. That same day, the respondents indicated that they do not oppose the motion.

On April 3, 2017, the ALJ issued the subject ID, granting the unopposed motion. The ALJ found that the motion complied with the requirements of Commission Rule 210.21(a)(1) (19 CFR 210.21(a)(1)) and further found that no extraordinary circumstances prohibited granting the motion. None of the parties petitioned for review of the ID.

The Commission has determined not to review the ID.

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: April 28, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017-08962 Filed 5-3-17; 8:45 am]

BILLING CODE 7020-02-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 17-022]

NASA International Space Station Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA International Space Station (ISS) Advisory

Committee. The purpose of the meeting is to review all aspects related to the safety and operational readiness of the ISS, and to assess the possibilities for using the ISS for future space exploration.

DATES: Thursday, June 1, 2017, 2:00–3:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Glennan Conference Room (1Q39), 300 E Street SW., Washington, DC 20546. Note: 1Q39 is located on the first floor of NASA Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Finley, 202–358–5684, patrick.t.finley@nasa.gov, Office of International and Interagency Relations, NASA Headquarters, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. This meeting is also accessible via teleconference. To participate telephonically, please contact Mr. Finley via email at patrick.t.finley@nasa.gov before 4:30 p.m. Local Time, on May 30, 2017. You will need to provide your name, affiliation, and phone number.

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Due to the Real ID Act, Public Law 109–13, any attendees with driver's licenses issued from non-compliant states/territories must present a second form of ID. [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the "List of the Acceptable Documents" on Form I–9]. Non-compliant states/territories are: Maine, Minnesota, Missouri, and Montana. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees that are U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status

no less than 3 working days in advance. Information should be sent to Patrick Finley via email at patrick.t.finley@nasa.gov, or by fax at (202) 358–3099. It is imperative that the meeting be held on these dates to the scheduling priorities of the key participants.

Patricia D. Rausch,

*Advisory Committee Management Officer,
National Aeronautics and Space Administration.*

[FR Doc. 2017–08963 Filed 5–3–17; 8:45 am]

BILLING CODE 7120–13–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(b)(4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: <http://www.nsf.gov/events/>. This information may also be requested by telephoning, 703/292–8687.

Dated: May 1, 2017.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2017–08986 Filed 5–3–17; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request approval for the collection of research and development data through the Nonprofit Research Activities survey. In accordance with the requirement of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received by July 3, 2017 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION, CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; 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:

Title of Collection: Nonprofit Research Activities Survey.

OMB Approval Number: 3145–0240.

Expiration Date of Current Approval: July 31, 2019.

Type of Request: Intent to renew an information collection.

Abstract: The new Nonprofit Research Activities (NPRA) survey represents one facet of the R&D measurement component of the NSF's National Center for Science and Engineering Statistics (NCSES) statistical program authorized by the America COMPETES Reauthorization Act of 2010 § 505, codified in the National Science Foundation Act of 1950 (NSF Act), as amended, at 42 U.S.C. 1862. Under paragraph "b", NCSES is directed to "(1) collect, acquire, analyze, report, and disseminate statistical data related to the science and engineering enterprise in the U.S. and other nations that is relevant and useful to practitioners, researchers, policymakers, and the public, including statistical data on:

(A) Research and development trends;

(B) the science and engineering workforce;

(C) U.S. competitiveness in science, engineering, technology, and research and development . . ."

The primary objective of the new survey is to fill data gaps in the *National Patterns of R&D Resources* in such a way that it is (a) compatible with data collected on the business, government, and higher education sectors of the U.S. economy and (b) appropriate for international comparisons. Since the last survey of research activity in the nonprofit sector occurred in 1996 and 1997, interest from the community has grown significantly in recent years. Thus, it is important that a new survey of nonprofit R&D be fielded to update current national estimates for the nonprofit sector.

NCSES recently concluded a pilot test of the new Nonprofit Research Activities Survey (NPRA) with 3,640 nonprofit organizations. Using the lessons learned from the pilot, NCSES now plans to conduct a full survey.

Use of the information: The primary purpose of this survey is to collect nationally representative data on nonprofit research spending and funding.

The nonprofit sector is one of four major sectors that perform and/or fund research and development (R&D) in the U.S. Historically, the National Science Foundation (NSF) has combined this sector's data with the business, government, and higher education sectors' data to estimate total national R&D expenditures via the annual

National Patterns of R&D Resources report. The other three sectors are surveyed annually; however, it has been 20 years since NSF last collected R&D data from nonprofit organizations.

The full NPRA survey will collect R&D and other related data from U.S. nonprofit organizations. This survey will collect the following:

- Total amount spent on R&D activities within nonprofit organizations,
- Number of employees and R&D employees,
- Sources of funds for R&D expenditures,
- Expenditures by field of R&D (biological and health sciences, engineering, physical sciences, social sciences, etc.),
- Expenditures by type of R&D (basic research, applied research, or experimental development),
- Total amount of R&D funding provided to entities outside the nonprofit organization,
- Types of recipients receiving R&D funding, and
- Funding by field of R&D (biological and health sciences, engineering, physical sciences, social sciences, etc.).

Expected respondents: The sample will be 6,500 nonprofit organizations. The target population for the NPRA Survey includes all NPOs categorized by the Internal Revenue Service (IRS) as 501(c)(3) public charities, 501(c)(3) private foundations, and other exempt organizations [e.g., 501(c)(1), 501(c)(2)]. To increase the efficiency of sampling organizations performing or funding research, organizations that are highly unlikely to be conducting research activities or already included in the other NCSES R&D surveys will be removed. In addition, organizations that do not meet a minimum size threshold, based on assets for private foundations and expenses for public charities, will be eliminated. The sample will be allocated to obtain a minimum of 800 completed responses from performers and 800 from funders.

Estimate of burden: We expect a response rate of 60%. Based on the responses to the pilot survey, we estimate the survey to require 4 hours to complete if the respondent both funds and performs research. The response time for nonprofit organizations that do not conduct or fund research should be under 20 minutes. We estimate that of the 6,500 organizations surveyed, no more than 1,300 will identify as performer or funders and submit a full survey response. Therefore our estimate of burden for the survey is 6,067 hours (5,200 hours for the 1,300 estimated performers and funders; 867 hours for

the remaining 2,600 organizations estimated to complete the survey).

Dated: May 1, 2017.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2017–09044 Filed 5–3–17; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–513, OMB Control No. 3235–0571]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Extension:

Rule 206(4)–6

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is "Rule 206(4)–6" under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) ("Advisers Act") and the collection has been approved under OMB Control No. 3235–0571. The Commission adopted rule 206(4)–6 (17 CFR 275.206(4)–6), the proxy voting rule, to address an investment adviser's fiduciary obligation to clients who have given the adviser authority to vote their securities. Under the rule, an investment adviser that exercises voting authority over client securities is required to: (i) Adopt and implement policies and procedures that are reasonably designed to ensure that the adviser votes securities in the best interest of clients, including procedures to address any material conflict that may arise between the interest of the adviser and the client; (ii) disclose to clients how they may obtain information on how the adviser has voted with respect to their securities; and (iii) describe to clients the adviser's proxy voting policies and procedures and, on request, furnish a copy of the policies and procedures to the requesting client. The rule is designed to assure that advisers that vote proxies for their clients vote those proxies in their clients' best interest and provide

clients with information about how their proxies were voted.

Rule 206(4)–6 contains “collection of information” requirements within the meaning of the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The collection is mandatory and responses to the disclosure requirement are not kept confidential.

The respondents are investment advisers registered with the Commission that vote proxies with respect to clients’ securities. Advisory clients of these investment advisers use the information required by the rule to assess investment advisers’ proxy voting policies and procedures and to monitor the advisers’ performance of their proxy voting activities. The information required by Advisers Act rule 204–2, a recordkeeping rule, also is used by the Commission staff in its examination and oversight program. Without the information collected under the rules, advisory clients would not have information they need to assess the adviser’s services and monitor the adviser’s handling of their accounts, and the Commission would be less efficient and effective in its programs.

The estimated number of investment advisers subject to the collection of information requirements under the rule is 10,942. It is estimated that each of these advisers is required to spend on average 10 hours annually documenting its proxy voting procedures under the requirements of the rule, for a total burden of 109,420 hours. We further estimate that on average, approximately 292 clients of each adviser would request copies of the underlying policies and procedures. We estimate that it would take these advisers 0.1 hours per client to deliver copies of the policies and procedures, for a total burden of 319,506 hours. Accordingly, we estimate that rule 206(4)–6 results in an annual aggregate burden of collection for SEC-registered investment advisers of a total of 428,926 hours.

Records related to an adviser’s proxy voting policies and procedures and proxy voting history are separately required under the Advisers Act recordkeeping rule 204–2 (17 CFR 275.204–2). The standard retention period required for books and records under rule 204–2 is five years, in an easily accessible place, the first two years in an appropriate office of the investment adviser. OMB has previously approved the collection with this retention period.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta Ahmed@omb.eop.gov*; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 28, 2017.

Eduardo Aleman,
Assistant Secretary.

[FR Doc. 2017–08971 Filed 5–3–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80558; File No. SR–NASDAQ–2016–120]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendments No. 1, 2, 3, 4, and 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Amended, To Establish the Third Party Connectivity Service

April 28, 2017.

I. Introduction

On August 16, 2016, the Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) 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 a proposed rule change to establish the third party connectivity service. The proposed rule change was published for comment in the **Federal Register** on September 2, 2016.⁴ The Commission received one comment letter regarding the proposal on September 12, 2016.⁵ Nasdaq responded to the comment letter on October 4, 2016.⁶ On October 5, 2016,

the Commission designated a longer period for Commission action on the proposed rule change.⁷ Subsequently, the Commission received three additional comment letters regarding the proposal: One from Virtu Financial, another from Bats responding to Nasdaq’s Letter, and a third from SIFMA.⁸ On November 30, 2016, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁹ Thereafter, the Commission received comments from IEX, SIFMA, KCG Holdings, and Citadel Securities¹⁰ regarding the proposed rule change and Nasdaq responded to the comments and filed Amendment No. 1.¹¹ On January 31, 2017, the Exchange filed Amendment No. 2 to the proposed rule change.¹² The Commission received two comment letters one from Bats and another from IEX on the amended proposal.¹³ On April 3, 2017, the Exchange filed Amendment No. 3 to the proposed rule change.¹⁴ On April 13, 2017, the Exchange filed Amendment No. 4.¹⁵ On April 18, 2017, the

Brent J. Fields, Secretary, Commission, dated October 4, 2016 (“Nasdaq Letter I”).

⁷ See Securities Exchange Act Release No. 79049, 81 FR 70452 (October 12, 2016).

⁸ See letters from Douglas A. Cifu, Chief Executive Officer, Virtu Financial, dated October 6, 2016 (“Virtu Letter”), Eric Swanson, General Counsel, Bats Global Markets, Inc., dated October 12, 2016 (“Bats Letter II”), and Melissa McGregor, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”), dated November 23, 2016 (“SIFMA Letter I”), to Brent J. Fields, Secretary, Commission.

⁹ See Securities Exchange Act Release No. 79431, 81 FR 87981 (December 6, 2016) (“OIP”).

¹⁰ See letters from John Ramsay, Chief Market Policy Officer, IEX Group, Inc. (“IEX”), dated December 9, 2016 (“IEX Letter I”), Melissa McGregor, Managing Director and Associate General Counsel, SIFMA, dated December 20, 2016 (“SIFMA Letter II”), John A. McCarthy, General Counsel, KCG Holdings, Inc. (“KCG Holdings”), dated December 23, 2016 (“KCG Letter”), and Adam C. Cooper, senior Managing Director and Chief Legal Officer, Citadel Securities (“Citadel”), dated December 27, 2016 (“Citadel Letter”), to Brent J. Fields, Secretary, Commission.

¹¹ See letter from T. Sean Bennett, Principal Associate General Counsel, Nasdaq Inc., to Brent J. Fields, Secretary, Commission, dated January 26, 2017 (“Nasdaq Letter II”).

¹² Amendment No. 1 was missing a required exhibit, therefore it was withdrawn and replaced by Amendment No. 2. See Amendment No. 2. The substance of Amendment No. 1 was the same as the substance of Amendment No. 2.

¹³ See letters from Eric Swanson, Esq., General Counsel, Bats Global Markets, Inc., dated February 6, 2017 (“Bats Letter III”) and John Ramsay, Chief Market Policy Officer, IEX, dated February 15, 2017 (“IEX Letter II”) to Brent J. Fields, Secretary, Commission.

¹⁴ See Amendment No. 3. Amendment No. 3 amended the filing to include the Assumption of Liability form.

¹⁵ See Amendment No. 4 which was withdrawn and replaced by Amendment No. 5.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ See Securities Exchange Act Release No. 78713 (August 29, 2016), 81 FR 60768 (“Notice”).

⁵ See letter from Eric Swanson, Esq., General Counsel, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 12, 2016 (“Bats Letter I”).

⁶ See letter from Jeffrey S. Davis, Vice President and General Counsel, Nasdaq Stock Market LLC, to

Exchange filed Amendment No. 5 to the proposed rule change.¹⁶ The Commission is publishing this notice to solicit comment on the proposed rule change, as amended, and is approving the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposed Rule Change

The Exchange proposes to adopt the third party connectivity service that will segregate connectivity to the Exchange and its proprietary data feeds from connectivity to third party services and data feeds, including the UTP SIP data feeds.¹⁷ Nasdaq states that this segregation is necessary because of increased capacity requirements, noting recent changes to the Consolidated Tape Association (“CTA”) and Options Price Reporting Authority (“OPRA”) feeds¹⁸ as well as planned changes to the Unlisted Trading Privileges (“UTP”) Plan data feeds.¹⁹

The third party connectivity service will be available to non-co-location and co-location customers and will enable customers to receive third party market data feeds, including SIP data, and other non-exchange services independent of Nasdaq proprietary feeds. In the proposal, Nasdaq stated that customers using 1Gb circuits to connect to the UTP SIP feeds would need to upgrade to a 10Gb Ultra circuit because of the increase in bandwidth requirements for the new feeds.²⁰ Customers seeking connectivity to the Exchange and its

proprietary data feeds may continue to do so through the existing connectivity options under Rule 7034(b) and Rule 7051(a).²¹ Customers that do not wish to subscribe to the third party connectivity service may connect through an extranet provider or a market data redistributor. The Exchange is proposing to offer services currently available to direct connectivity subscribers under Rule 7051 to subscribers to third party connectivity services because Nasdaq believes they may have the same connectivity needs as customers of the existing direct connectivity service.²²

The Exchange proposes to assess fees for the third party connectivity service. The fee for installation of either a 10Gb Ultra or 1Gb Ultra third party services co-location or direct connectivity subscription would be \$1,500. The monthly fee for a 10Gb Ultra connection would be \$5,000 and for a 1Gb Ultra connection the fee would be \$2,000.

The proposal as amended provides that every customer may receive two third party circuit connections free of charge if used solely to receive the UTP SIP feeds (*i.e.*, the UTDF and UQDF feeds) (“UTP-only use”).²³ The Exchange proposes to provide UTP-only connectivity beyond the two free connections, for an installation fee of \$100 per connection and an ongoing monthly fee of \$100 per connection and will offer UTP-only connectivity through either a 1Gb Ultra or a 10Gb Ultra connection.²⁴ The Exchange also proposes to allow customers to elect to receive UTP SIP data through a 1Gb Ultra option in lieu of the 10Gb Ultra option if the customer acknowledges that the subscriber is aware of the risks associated with such an election.²⁵ Finally, the Exchange proposes to extend the waiver of the fees from February 28, 2017, through the end of April 2017.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that

the proposed rule change is consistent with Section 6(b)(4) of the Act,²⁶ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, Section 6(b)(5) of the Act,²⁷ which requires, among other things, that the rules of a national securities 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, to protect investors and the public interest, and not to permit unfair discrimination between customers, issuers, brokers, or dealers, and Section 6(b)(8) of the Act,²⁸ which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

As noted above, the Commission received ten comment letters from six commenters on the proposed rule change.²⁹ All of the commenters object to the proposal. The Commission also received two response letters from Nasdaq: One responding to Bats, the second responding to IEX, SIFMA, KCG Holdings, and Citadel.³⁰ In addition, Nasdaq amended its proposal to address the concerns raised by commenters.³¹

The commenters raise three main concerns with the proposal. First, commenters assert that the proposal addresses a matter properly governed by the UTP Plan, the terms of which require approval of the proposal by the UTP Operating Committee.³² Second, the commenters assert that Nasdaq would benefit from the proposal to the detriment of customers seeking access to UTP SIP data because subscribers who wish to continue to receive the UTP SIP feed would incur additional costs to receive data that they currently receive in a bundle with Nasdaq proprietary

¹⁶ See Amendment No. 5. Amendment No. 5 amended the text of the proposed rule change in response to the comments and withdrew Amendment No. 4. Amendment No. 4 included the same substantive changes to the rule change however, it was not properly filed.

¹⁷ Third party services include not only SIP data feeds, but also data feeds from other exchanges and markets. For example, third party connectivity will support connectivity to the FINRA/Nasdaq Trade Reporting Facility, BATS Depth Feeds, and NYSE Feeds. See Notice, 81 FR at 60769 n.10.

¹⁸ See <https://www.nyse.com/publicdocs/ctaplan/notifications/traderupdate/CTA%20SIP%201Q16%20Consolidated%20Data%20Operating%20Metrics%20Report.pdf>; see also, http://www.opradata.com/specs/opra_bandwidth_apr2016.pdf.

¹⁹ The UTP SIP feeds are comprised of a UTP Quote Data Feed (“UQDF”) and a UTP Trade Data Feed (“UTDF”). The UQDF provides continuous quotations from all market centers trading Nasdaq-listed securities. The UTDF provides continuous last sale information from all market centers trading Nasdaq-listed securities. See <http://www.utpplan.com/>.

²⁰ In response to comments, Nasdaq amended the filing to permit the use of 1Gb Ultra connections and proposed that subscribers sign an Assumption of Liability form indicating that they were aware of the risks of using a 1Gb connection and would hold Nasdaq harmless. See Amendments No. 2 and 3. Nasdaq amended the proposal again to replace the Assumption of Liability form with the Capacity Acknowledgement form. See Amendment No. 5.

²¹ See Notice, 81 FR at 60769.

²² See *id.*

²³ See Amendment No. 5.

²⁴ See Amendment No. 5.

²⁵ See Amendment No. 5. Under the proposal, as amended by Amendment No. 5, the Exchange replaced the Assumption of Liability form with a Capacity Acknowledgement form, requiring each subscriber that elects to use the 1Gb Ultra connectivity to receive UTP-only data to acknowledge the risks associated with such connectivity.

²⁶ 15 U.S.C. 78f(b)(4).

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ 15 U.S.C. 78f(b)(8).

²⁹ See *supra* notes 5, 8, 10, 13.

³⁰ See Nasdaq Letters I and II.

³¹ See Amendments No. 2, 3 and 5.

³² The Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“The UTP Plan”) is administered by its participants through an operating committee (“UTP Operating Committee”) which is composed of one representative designated by each participant of the plan. See, e.g., Sections IV.A., B.3, and IV.C.2 of the UTP Plan, and Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007).

data.³³ Third, the commenters question the need for enhanced capacity.³⁴

Commenters argue that the proposal constitutes an access fee for direct access to UTP data which must be approved by the UTP operating committee under the UTP Plan.³⁵ In addition, according to commenters, the proposal targets UTP data recipients and extends the scope of the UTP system to include customer connectivity, because Nasdaq is the sole provider of direct access to UTP data, and therefore firms seeking direct access to UTP data would be required to subscribe to and pay for the proposed third party connectivity service.³⁶

In response, Nasdaq notes that it has controlled the network and network connectivity without input from the UTP operating committee for over 25 years,³⁷ and that neither the UTP Plan nor the processor agreement grants the UTP operating committee authority over the network or network connectivity associated with SIP data.³⁸ Nasdaq also asserts that the proposal does not target UTP data recipients because UTP SIP data is combined with, and carried on, the same network as data from other sources.³⁹ To further address these concerns, Nasdaq filed Amendment No. 5.⁴⁰ First, Nasdaq will offer every customer two third party connections for UTP-only use at no cost.⁴¹ Second, Nasdaq will allow customers to select a 1Gb Ultra or 10Gb Ultra port to connect to SIP data, both for the free connections provided by Nasdaq and for additional connections to which they subscribe.⁴² Furthermore, connections for UTP-only use beyond the two free connections will be available for \$100 a month in addition to a \$100 installation fee,

significantly below the charge to receive Nasdaq proprietary data.⁴³ Subscribers electing to receive UTP-only data using a 1Gb Ultra connection would be required to complete a Capacity Acknowledgement form acknowledging in writing the risks associated with such connectivity, though not relieving Nasdaq of liability.⁴⁴ Nasdaq believes these changes are responsive to the concerns raised by the commenters.⁴⁵

All commenters challenge the technical necessity of the proposal. Bats asserts that the proposal is technically unnecessary and merely an attempt to increase revenues by charging fees for UTP access. More specifically, Bats argues that Nasdaq SIP bandwidth recommendations are excessive, inconsistent with current peak UTP message traffic, and much higher than recommendations for Nasdaq's own proprietary data products.⁴⁶ Citadel states that "Nasdaq has failed to provide a reasonable justification for requiring market participants to purchase a high bandwidth 10Gb Ultra connection" to access SIP data.⁴⁷

In response, Nasdaq states that it has "done substantial analysis to support the recommendation and it believes the recommendation is consistent with its limited experience with the new Processor."⁴⁸ Nasdaq also states that "[d]uring a one month period (23 trading days) this summer, Nasdaq observed the new UTP Trade Data binary feed exceeding a 1G capacity for a 1 microsecond timeframe in 18 of the trading days. If you add the new UTP Quote Data binary feed to that same connection, the combined feeds exceed 1G capacity for 1 microsecond timeframe in 23 trading days."⁴⁹ In addition, Nasdaq asserts that the UTP operating committee has "input into the bandwidth recommendation" and could act to lower it further.⁵⁰ Bats responds stating its views that Nasdaq had not demonstrated that the proposal was technically necessary, because in Bat's view, using a one microsecond burst to determine a bandwidth recommendation is misplaced, as the observed peak is not sustained over a

full second.⁵¹ Bats states that Nasdaq's bandwidth recommendation reflects the maximum burst rate capability of the new system rather than the current capacity requirement.⁵² SIFMA agrees with Bats on this issue, stating that Nasdaq has not provided any "reasonable justification for requiring member firms to use a 10Gb connection to receive SIP data."⁵³ SIFMA states that there is no compelling necessity, either technical or otherwise, for creating a separate connection for access to the SIP data.⁵⁴

Nasdaq disagrees with these arguments, stating its belief that they are reckless, because "there is no disagreement that data feed requirements have increased significantly, and will continue to do so."⁵⁵ Nasdaq further states that it continues to observe spikes in the UTP feeds that exceed 1Gb, justifying the 10Gb offering.⁵⁶ Nasdaq also asserts that the proposal would segregate data for network resiliency and ensure that connectivity is adequate for intended use. In addition, Nasdaq states that it developed the isolated the network carrying the SIP data to reduce potential conflicts of interest arising from Nasdaq's operation of the Processor and its exchanges.⁵⁷

Nasdaq responded to the comments and amended the filing such that any customer that wishes to receive only the data from the UTP SIP will be able receive two UTP-only data connections free of charge via a 1Gb Ultra or 10Gb Ultra connection.⁵⁸ Additional connections for UTP-only use will be available for \$100 per month with an installation fee of \$100 per port. Nasdaq represents that those costs are significantly lower than the proposed fees to be assessed for other third party connectivity and will cover some of the costs associated with providing the connectivity.⁵⁹ Nasdaq noted that current subscribers to three or more connections under Rules 7034(b) and 7051 that contain a mix of Nasdaq proprietary data and UTP data will pay more under the proposal to receive the same data, however, Nasdaq believes that such a fee increase is reasonable in light of the costs incurred by the Exchange in offering separate networks for UTP data feed connectivity and Nasdaq's proprietary data feed

³³ See e.g., Bats Letter I at 3–5; Bats Letter II at 2–3; Bats Letter III at 3–4; Virtu Letter at 1–2; SIFMA Letter I at 2–3; IEX Letter I at 1; SIFMA Letter II at 2; KCG Letter at 2; Citadel Letter at 2; IEX Letter II at 2.

³⁴ See Bats Letter I at 3–5; Bats Letter II at 2–3; Bats Letter III at 3–4; Virtu Letter at 1–2; SIFMA Letter I at 2–3; IEX Letter I at 1; SIFMA Letter II at 2; KCG Letter at 2; Citadel Letter at 2; IEX Letter II at 2.

³⁵ See Bats Letter I at 1–2; Bats Letter II at 3–4; Bats Letter III at 2–3; SIFMA Letter I at 2; IEX Letter I at 1; SIFMA Letter II at 2; KCG Letter at 3–4; IEX Letter II at 1–2.

³⁶ See e.g., Bats Letter I at 3–5; Bats Letter II at 2–3; Bats Letter III at 3–4; Virtu Letter at 1–2; SIFMA Letter I at 2–3; IEX Letter I at 1; SIFMA Letter II at 2; KCG Letter at 2; Citadel Letter at 2; IEX Letter II at 2.

³⁷ See Nasdaq Letter I at 2–4.

³⁸ Nasdaq noted that the UTP Plan does not explicitly address connectivity fees. See Nasdaq Letter I at 2.

³⁹ See Nasdaq Letter I at 3.

⁴⁰ See Amendment No. 5.

⁴¹ See e.g. Nasdaq Letter II at 2–3; Amendment No. 5.

⁴² See *id.*

⁴³ See *id.*

⁴⁴ See Exhibit 3 to Amendment No. 5.

⁴⁵ See Nasdaq Letter II.

⁴⁶ See Bats Letter I at 3–5; Bats Letter II at 2–3; Bats Letter III at 3–4. Virtu, SIFMA, KCG Holdings, and IEX agree with Bats. See, e.g., Virtu Letter at 1–2; SIFMA Letter I at 2–3; IEX Letter I at 1; SIFMA Letter II at 2; KCG Letter at 2; IEX Letter II at 2.

⁴⁷ See Citadel Letter at 2. See also Amendment No. 2 which amended the filing to permit the use of 1Gb connections.

⁴⁸ See Nasdaq Letter I at 5.

⁴⁹ See *id.*

⁵⁰ See *id.*

⁵¹ See Bats Letter II at 2–3.

⁵² See *id.*

⁵³ See SIFMA Letter I at 2.

⁵⁴ See *id.*

⁵⁵ See Nasdaq Letter II at 2.

⁵⁶ See *id.*

⁵⁷ See Nasdaq Letter II at 3.

⁵⁸ See Amendment No. 5 p. 6.

⁵⁹ See Amendment No. 5 p. 7 and 10.

connectivity, which will assist subscribers with risk management.⁶⁰ Further, Nasdaq removed the requirement that subscribers absolve Nasdaq of liability if they take a 1Gb Ultra connection.⁶¹

Nasdaq noted that the UTP Plan does not explicitly address connectivity fees. As to concerns raised by the commenters that Nasdaq has not substantiated the need for the third party connectivity service, Nasdaq noted that the “UTP Operating Committee has had and continues to have input into the bandwidth recommendation”⁶² and states that Nasdaq lowered the recommendation in response to the Committee’s recommendation and would be ready to lower the recommendation again if the operating committee were to direct it to do so.⁶³ In addition, as noted above, Nasdaq amended the proposal to provide two connections for UTP SIP data free of charge and additional connections at lower fees that reflect some of the costs associated with providing the connectivity.⁶⁴ The Commission believes that Nasdaq has adequately addressed the concerns raised by the comments in its response letters and its amendments to the proposal.⁶⁵

IV. Solicitation of Comments on the Proposal as Amended

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the filing, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2016–120 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–NASDAQ–2016–120. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–120 and should be submitted on or before May 25, 2017.

V. Accelerated Approval of Proposed Rule Change, as Amended

The Commission finds good cause to approve the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of the amended proposal in the **Federal Register**. As noted above, Nasdaq amended the proposal to respond to the concerns raised by the commenters. Specifically, the Exchange is proposing to offer two free UTP-only connections via a 1Gb Ultra or 10Gb Ultra port. Nasdaq also replaced the Assumption of Liability form with a Capacity Acknowledgement form, such that customers are no longer required to hold Nasdaq harmless if they choose to take a 1Gb Ultra connection. The Exchange also proposes to provide additional UTP-only connectivity for an installation fee of \$100 per connection and an ongoing monthly fee of \$100 per connection. Because these changes address concerns raised by the commenters, the Commission finds good cause for approving the proposed rule change, as amended, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.⁶⁶

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2016–120), as amended, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁷

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–08983 Filed 5–3–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80550; File No. SR–NYSEMKT–2016–99]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Amending Rule 104—Equities To Delete Subsection (g)(i)(A)(III) Prohibiting Designated Market Makers From Establishing a New High (Low) Price on the Exchange in a Security the DMM Has a Long (Short) Position During the Last Ten Minutes Prior to the Close of Trading

April 28, 2017.

On October 27, 2016, NYSE MKT (“NYSE MKT” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change amending Rule 104—Equities to delete subsection (g)(i)(A)(III), which prohibits Designated Market Makers (“DMMs”) from establishing, during the last ten minutes of trading before the close, a new high (low) price for the day on the Exchange in a security in which the DMM has a long (short) position. The proposed rule change was published for comment in the **Federal Register** on November 17, 2016.³

On December 20, 2016, the Commission extended to February 15, 2017, the time period in which to approve the proposal, disapprove the proposal, or institute proceedings to determine whether to approve or disapprove the proposal.⁴ On February 15, 2017, the Commission instituted

⁶⁷ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 79283 (Nov. 10, 2016), 81 FR 81210 (Nov. 17, 2016).

⁴ See Securities Exchange Act Release No. 79611 (Dec. 20, 2016), 81 FR 95205 (Dec. 27, 2016).

⁶⁰ See Amendment No. 5.

⁶¹ See Amendment No. 5.

⁶² See Nasdaq Letter I at 5.

⁶³ See *id.*

⁶⁴ See Nasdaq Letter I and Nasdaq Letter II; Amendment No. 5.

⁶⁵ See Nasdaq Letter I and Nasdaq Letter II and amendments to the proposal.

⁶⁶ 15 U.S.C. 78s(b)(2).

proceedings under Section 19(b)(2)(B) of the Act⁵ to determine whether to approve or disapprove the proposed rule change.⁶ On March 16, 2017, the Exchange filed a response to the Order Instituting Proceedings.⁷

Section 19(b)(2) of the Act⁸ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on November 17, 2016.⁹ The 180th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is May 16, 2017.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁰ designates July 15, 2017, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NYSE-MKT-2016-99).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Eduardo A. Aleman,
Assistant Secretary.

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BILLING CODE 8011-01-P

⁵ 15 U.S.C. 78s(b)(2)(B).

⁶ See Securities Exchange Act Release No. 80043 (Feb. 15, 2017), 82 FR 11379 (Feb. 22, 2017) (“Order Instituting Proceedings”). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, 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 “to protect investors and the public interest.” See *id.*, 81 FR at 11380.

⁷ See letter to Brent J. Fields, Secretary, Commission, from Elizabeth King, General Counsel and Corporate Secretary, New York Stock Exchange LLC, dated March 16, 2017, available at <https://www.sec.gov/comments/sr-nyse-2016-71/nyse201671-1645043-148163.pdf>.

⁸ 15 U.S.C. 78s(b)(2).

⁹ See *supra* note 3.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80552; File No. SR-NYSE-2016-71]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Amending Rule 104 To Delete Subsection (g)(i)(A)(III) Prohibiting Designated Market Makers From Establishing a New High (Low) Price on the Exchange in a Security the DMM Has a Long (Short) Position During the Last Ten Minutes Prior to the Close of Trading

April 28, 2017.

On October 27, 2016, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change amending Rule 104 to delete subsection (g)(i)(A)(III), which prohibits Designated Market Makers (“DMMs”) from establishing, during the last ten minutes of trading before the close, a new high (low) price for the day on the Exchange in a security in which the DMM has a long (short) position. The proposed rule change was published for comment in the **Federal Register** on November 17, 2016.³

On December 20, 2016, the Commission extended to February 15, 2017, the time period in which to approve the proposal, disapprove the proposal, or institute proceedings to determine whether to approve or disapprove the proposal.⁴ On February 15, 2017, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁵ to determine whether to approve or disapprove the proposed rule change.⁶ Following the Order

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 79284 (Nov. 10, 2016), 81 FR 81222 (Nov. 17, 2016).

⁴ See Securities Exchange Act Release No. 79612 (Dec. 20, 2016), 81 FR 95205 (Dec. 27, 2016).

⁵ 15 U.S.C. 78s(b)(2)(B).

⁶ See Securities Exchange Act Release No. 80044 (Feb. 15, 2017), 82 FR 11388 (Feb. 22, 2017) (“Order Instituting Proceedings”). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, 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

Instituting Proceedings, the Commission received a comment letter supporting the proposal.⁷ On March 16, 2017, the Exchange filed a response to the Order Instituting Proceedings.⁸

Section 19(b)(2) of the Act⁹ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on November 17, 2016.¹⁰ The 180th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is May 16, 2017.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹¹ designates July 15, 2017, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NYSE-2016-71).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Eduardo A. Aleman,
Assistant Secretary.

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BILLING CODE 8011-01-P

of trade,” and “to protect investors and the public interest.” See *id.*, 81 FR at 11388.

⁷ See letter to Eduardo A. Aleman, Assistant Secretary, Commission, from Stephen John Berger, Managing Director, Government and Regulatory Policy, Citadel Securities, dated May 15, 2017, available at <https://www.sec.gov/comments/sr-nyse-2016-71/nyse201671-1643039-147158.pdf>.

⁸ See letter to Brent J. Fields, Secretary, Commission, from Elizabeth King, General Counsel and Corporate Secretary, New York Stock Exchange LLC, dated March 16, 2017, available at <https://www.sec.gov/comments/sr-nyse-2016-71/nyse201671-1645043-148163.pdf>.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ See *supra* note 3.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80549; File No. 4–631]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of the Fourteenth Amendment to the National Market System Plan To Address Extraordinary Market Volatility by Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

April 28, 2017.

I. Introduction

On April 13, 2017, NYSE Group, Inc., on behalf of the following parties to the National Market System Plan to Address Extraordinary Market Volatility (“the Plan”):¹ Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange,

¹ On May 31, 2012, the Commission approved the Plan, as modified by Amendment No. 1. *See* Securities Exchange Act Release No. 67091, 77 FR 33498 (June 6, 2012) (File No. 4–631). On February 20, 2013, the Commission notified for immediate effectiveness the Second Amendment to the Plan. *See* Securities Exchange Act Release No. 68953, 78 FR 13113 (February 26, 2013). On April 3, 2013, the Commission approved the Third Amendment to the Plan. *See* Securities Exchange Act Release No. 69287, 78 FR 21483 (April 10, 2013). On August 27, 2013, the Commission notified for immediate effectiveness the Fourth Amendment to the Plan. *See* Securities Exchange Act Release No. 70273, 78 FR 54321 (September 3, 2013). On September 26, 2013, the Commission approved the Fifth Amendment to the Plan. *See* Securities Exchange Act Release No. 70530, 78 FR 60937 (October 2, 2013). On January 7, 2014, the Commission notified for immediate effectiveness the Sixth Amendment to the Plan. *See* Securities Exchange Act Release No. 71247, 79 FR 2204 (January 13, 2014). On April 3, 2014, the Commission approved the Seventh Amendment to the Plan. *See* Securities Exchange Act Release No. 71851, 79 FR 19687 (April 9, 2014). On February 19, 2015, the Commission approved the Eight Amendment to the Plan. *See* Securities Exchange Act Release No. 74323, 80 FR 10169 (February 25, 2015). On October 22, 2015, the Commission approved the Ninth Amendment to the Plan. *See* Securities Exchange Act Release No. 76244, 80 FR 66099 (October 28, 2015). On April 21, 2016, the Commission approved the Tenth Amendment to the Plan. *See* Securities Exchange Act Release No. 77679, 81 FR 24908 (April 27, 2016). On August 26, 2016, the Commission notified for immediate effectiveness the Eleventh Amendment to the Plan. *See* Securities Exchange Act Release No. 78703, 81 FR 60397 (September 1, 2016). On January 19, 2017, the Commission approved the Twelfth Amendment to the Plan. *See* Securities Exchange Act Release No. 79845, 82 FR 8551 (January 26, 2017). On April 13, 2017, the Commission approved the Thirteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 80455, 82 FR 18519 (April 19, 2017).

Inc., Chicago Stock Exchange, Inc., the Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC (“Nasdaq”), New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc., NYSE MKT LLC, and NYSE National Inc. (collectively, the “Participants”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 608 thereunder,³ a proposal to amend the Plan (“Fourteenth Amendment”).⁴ The proposal reflects changes unanimously approved by the Participants. The Fourteenth Amendment proposes to change the implementation date for the twelfth amendment to the Plan (“Twelfth Amendment”), as discussed below. The proposed change does not alter the text of the Plan. The Participants are filing the Fourteenth Amendment for immediate effectiveness pursuant to Rule 608(b)(3)(iii) of Regulation NMS (“Rule 608”) under the Exchange Act.⁵ The Commission is publishing this notice to solicit comments from interested persons.⁶

II. Description of the Plan

Set forth in this Section II is the statement of the purpose and summary of the Fourteenth Amendment, along with the information required by Rule 608(a)(4) and (5) under the Exchange Act,⁷ substantially prepared and submitted by the Participants to the Commission.⁸

A. Statement of Purpose and Summary of the Plan Amendment

The Participants filed the Plan on April 5, 2011, to create a market-wide limit up-limit down mechanism intended to address extraordinary market volatility in NMS Stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Exchange Act. The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would prevent trades in individual NMS Stocks from occurring outside of the specified price bands. These limit up-limit down requirements are coupled with Trading

Pauses,⁹ as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves. In particular, the Participants adopted this Plan to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.

As set forth in more detail in the Plan, all trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down requirements specified in the Plan. More specifically, the single plan processor responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act will be responsible for calculating and disseminating a lower price band and upper price band, as provided for in Section V of the Plan. Section VI of the Plan sets forth the limit up-limit down requirements of the Plan, and in particular, that all trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the lower price band or above the upper price band for an NMS Stock, consistent with the Plan.

The changes approved by the Commission in the Twelfth Amendment provide that a Trading Pause will continue until the Primary Listing Exchange has reopened trading using its established reopening procedures, and to require that trading centers not resume trading in an NMS Stock following a Trading Pause without Price Bands for such NMS Stock. In the Statement of Purpose filed with the Twelfth Amendment, the Participants stated that the changes described in the Twelfth Amendment would be implemented no later than six months after approval of that amendment. Based on the date of the approval order of the Twelfth Amendment, the Twelfth Amendment must be implemented no later than July 19, 2017. Because the SIP technology changes necessary to implement the Twelfth Amendment will not be ready by July 19, 2017, the Participants are filing this proposal to change the implementation date for the changes to the Plan set forth in the Twelfth Amendment to September 30, 2017.

² 15 U.S.C 78k–1(a)(3).

³ 17 CFR 242.608.

⁴ *See* Letter from Elizabeth King, General Counsel and Corporate Secretary, NYSE, to Brent Fields, Secretary, Commission, dated April 12, 2017 (“Transmittal Letter”).

⁵ 17 CFR 242.608.

⁶ *Id.*

⁷ *See* 17 CFR 242.608(a)(4) and (a)(5).

⁸ *See* Transmittal Letter, *supra* note 4.

⁹ Unless otherwise specified, the terms used herein have the same meaning as set forth in the Plan.

In addition, the Primary Listing Exchanges will not be ready to implement the changes to their automated reopening processes following a Trading Pause, which were made pursuant to exchange rule filings in conjunction with the Twelfth Amendment, by July 19, 2017. To provide for a standardized approach that would allow for extensions of a Trading Pause by the Primary Listing Exchange if equilibrium cannot be met to establish a Reopening Price within specified parameters (“automated reopening changes”), the Primary Listing Exchanges amended their rules for automated reopenings.¹⁰ The Primary Listing Exchanges anticipate implementing the automated reopening changes in the third quarter of 2017, assuming that the Processors have implemented their changes and each Primary Listing Exchange is able to implement their proposed rule changes simultaneously.¹¹

Accordingly, both to provide time to support the technology changes for the Twelfth Amendment and to align the implementation date of the Twelfth Amendment with the implementation timeline for the automated reopening changes by the Primary Listing Exchanges, the Participants propose to change the implementation date for the changes in the Twelfth Amendment to no later than the end of the third quarter of 2017.¹² This proposed change does not require any changes to the text of the Plan.

The Participants believe that the proposed modification to the implementation schedule is technical and ministerial in nature because it simply extends the implementation period for the Twelfth Amendment and does not change any substantive elements of the Plan.¹³ The Participants

believe that the proposal to extend the implementation schedule is consistent with the goal of the Twelfth Amendment, which is to reduce the potential for sequential Trading Pauses in an NMS Stock by centralizing the reopening process through the Primary Listing Exchanges, because it would align the implementation schedule for the Twelfth Amendment with the implementation schedule for the automated reopening changes. The proposed amendment would therefore protect investors and the public interest and is appropriate to the maintenance of fair and orderly markets.

B. Governing or Constituent Documents

The governing documents of the Processor, as defined in Section I(P) of the Plan, will not be affected by the Plan, but once the Plan is implemented, the Processor’s obligations will change, as set forth in detail in the Plan.

C. Implementation of Plan

The initial date of the Plan operations was April 8, 2013.

D. Development and Implementation Phases

The Plan was initially implemented as a one-year pilot program in two Phases, consistent with Section VIII of the Plan: Phase I of Plan implementation began on April 8, 2013 and was completed on May 3, 2013. Implementation of Phase II of the Plan began on August 5, 2013 and was completed on February 24, 2014. The tenth amendment to the Plan was implemented on July 18, 2016. Pursuant to the thirteenth amendment to the Plan, the pilot period of the Plan was extended until April 16, 2018.¹⁴ Currently, the Participants must implement the Twelfth Amendment no later than July 19, 2017. Pursuant to this proposed amendment, the Participants propose to extend the time frame to implement the Twelfth Amendment to no later than the end of the third quarter of 2017.

E. Analysis of Impact on Competition

The proposed Plan does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Participants do not believe that the proposed Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the Plan. Section II(C) of the Plan sets forth how any entity registered as a national securities exchange or national securities association may become a Participant.

G. Approval of Amendment of the Plan

Each of the Plan’s Participants has executed a written amended Plan.

H. Terms and Conditions of Access

Section II(C) of the Plan provides that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans, as defined in Section I(F) of the Plan; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

Section III(C) of the Plan provides that each Participant shall designate an individual to represent the Participant as a member of an Operating Committee. No later than the initial date of the Plan, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee. Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608.

On April 12, 2017, the Operating Committee, duly constituted and chaired by Mr. Robert Books of Bats, met and voted unanimously to amend the Plan as set forth herein in accordance with Section III(C) of the Plan. The Plan Advisory Committee was notified in connection with the Fourteenth Amendment and was in favor.

¹⁰ See Securities Exchange Act Release Nos. 79846 (January 19, 2017), 82 FR 8548 (January 26, 2017) (SR–NYSEArca–2016–130) (Approval Order); 79884 (January 26, 2017), 82 FR 8968 (February 1, 2017) (SR–BatsBZX–2016–61) (Approval Order); 79876 (January 25, 2017), 82 FR 8888 (January 31, 2017) (SR–Nasdaq–2016–131) (Approval Order).

¹¹ In other words, the Participants expect that both the changes pursuant to the Twelfth Amendment and the Primary Listing Exchange automated reopening changes would become operative at the same time.

¹² The Participants anticipate that the Twelfth Amendment changes will be implemented in August 2017. However, to align the implementation schedule with the automated reopening changes, the Participants propose to specify the same implementation time frame as the Primary Listing Exchanges have proposed for the automated reopening changes. See *supra* note 10.

¹³ See, e.g., Securities Exchange Act Release Nos. 70273 (amending Section VIII.B of the Plan to establish a new implementation schedule for Phase II of the Plan) and 71247 (amending Section VIII.B of the Plan to establish a new implementation schedule for Phase II of the Plan), *supra* note 1.

¹⁴ See Securities Exchange Act Release No. 80455 (order approving the thirteenth amendment to the Plan), *supra* note 1.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Exchange Act and the rules thereunder. 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 4-631 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number 4-631. 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 plan amendment that are filed with the Commission, and all written communications relating to the amendment 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 Participants' offices. 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 4-631 and should be submitted on or before May 25, 2017.

By the Commission.

Eduardo Aleman,

Assistant Secretary.

[FR Doc. 2017-08970 Filed 5-3-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-32616]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 28, 2017.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April 2017. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 23, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

FOR FURTHER INFORMATION CONTACT: Hae-Sung Lee, Attorney-Adviser, at (202) 551-7345 or Chief Counsel's Office at (202) 551-6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549-8010.

Tax Exempt Municipal Trust [File No. 811-02551]¹

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On September 3, 2014, applicant made a liquidating distribution to its shareholders, based

¹ Applicant was previously issued a release number in the notice of applications for deregistration for March 2017 (Investment Company Act Release No. 32587). A new release number has been issued to correct an error in connection with the March 2017 notice.

on net asset value. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on February 22, 2017.

Applicant's Address: 18925 Base Camp Road, Suite 203, Monument, Colorado 80132.

Tortoise MLP Growth Fund, Inc. [File No. 811-22776]¹

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on February 27, 2017.

Applicant's Address: 11550 Ash Street, Suite 300, Leawood, Kansas 66211.

Brookfield Mortgage Opportunity Income Fund Inc. [File No. 811-22773]¹

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Brookfield Real Assets Income Fund Inc. and, on December 12, 2016, made a final distribution to its shareholders based on net asset value. Expenses of \$778,720 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Date: The application was filed on March 7, 2017.

Applicant's Address: Brookfield Place, 250 Vesey Street, 15th Floor, New York, New York 10281.

Brookfield High Income Fund Inc. [File No. 811-08795]¹

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Brookfield Real Assets Income Fund Inc. and, on December 12, 2016, made a final distribution to its shareholders based on net asset value. Expenses of \$386,068 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Date: The application was filed on March 7, 2017.

Applicant's Address: Brookfield Place, 250 Vesey Street, 15th Floor, New York, New York 10281.

Brookfield Total Return Fund Inc. [File No. 811-05820]¹

Summary: Applicant, a closed-end investment company, seeks an order

declaring that it has ceased to be an investment company. The applicant has transferred its assets to Brookfield Real Assets Income Fund Inc. and, on December 12, 2016, made a final distribution to its shareholders based on net asset value. Expenses of \$604,887 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Date: The application was filed on March 7, 2017.

Applicant's Address: Brookfield Place, 250 Vesey Street, 15th Floor, New York, New York 10281.

Schroder Capital Funds (Delaware) [File No. 811-01911]¹

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Hartford Mutual Funds II, Inc. and, on October 21, 2016, made a final distribution to its shareholders based on net asset value. Expenses of approximately \$143,531 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's investment adviser.

Filing Dates: The application was filed on February 9, 2017 and amended on March 13, 2017.

Applicant's Address: 875 Third Avenue, 22nd Floor, New York, New York 10022.

Nicholas Money Market Fund, Inc. [File No. 811-05537]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 12, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$31,431 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Date: The application was filed on March 31, 2017.

Applicant's Address: 700 N. Water St., Suite 1010, Milwaukee, Wisconsin 53202.

Guggenheim Equal Weight Enhanced Equity Income Fund [File No. 811-22584]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Guggenheim Enhanced Equity Income Fund and, on March 20, 2017, made a final distribution to its shareholders based on net asset value. Expenses of \$342,187 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Dates: The application was filed on March 22, 2017 and amended on March 31, 2017.

Applicant's Address: 227 West Monroe Street, Chicago, Illinois 60606.

Guggenheim Enhanced Equity Strategy Fund [File No. 811-21455]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Guggenheim Enhanced Equity Income Fund and, on March 20, 2017, made a final distribution to its shareholders based on net asset value. Expenses of \$348,511 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Dates: The application was filed on March 22, 2017 and amended on March 31, 2017.

Applicant's Address: 227 West Monroe Street, Chicago, Illinois 60606.

Palmer Square Strategic Finance Fund [File No. 811-23094]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on March 7, 2017 and April 4, 2017.

Applicant's Address: c/o Palmer Square Capital Management LLC, 2000 Shawnee Mission Parkway, Suite 300, Mission Woods, Kansas 66205.

Touchstone Tax-Free Trust [File No. 811-03174]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Touchstone Strategic Trust and, on December 16, 2016, made a final distribution to its shareholders based on net asset value. Expenses of \$42,700 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Date: The application was filed on April 5, 2017.

Applicant's Address: 303 Broadway, Suite 1100, Cincinnati, Ohio 45202.

Capstone Series Fund, Inc. [File No. 811-01436]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Steward Funds, Inc. and, on February 14, 2017, made a

final distribution to its shareholders based on net asset value. Expenses of approximately \$45,939 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on April 11, 2017.

Applicant's Address: 3700 W Sam Houston Parkway S, Suite 250, Houston, Texas 77042.

EnTrust Multi-Strategy Fund [File No. 811-22840]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 31, 2017, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$10,000 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Date: The application was filed on April 18, 2017.

Applicant's Address: 375 Park Avenue, 24th Floor, New York, New York 10152.

EnTrust Multi-Strategy Master Fund [File No. 811-22841]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 31, 2017, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$10,000 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Date: The application was filed on April 18, 2017.

Applicant's Address: 375 Park Avenue, 24th Floor, New York, New York 10152.

Advance Capital I, Inc. [File No. 811-05127]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 22, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$518,433 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on March 31, 2017 and amended on April 25, 2017.

Applicant's Address: One Towne Square, Suite 444, Southfield, Michigan 48076.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017-08984 Filed 5-3-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80553; File No. SR-NYSEArca-2017-36]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Adopt a New NYSE Arca Equities Rule 8.900 and To List and Trade Shares of the Royce Pennsylvania ETF; Royce Premier ETF; and Royce Total Return ETF Under Proposed NYSE Arca Equities Rule 8.900

April 28, 2017.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 14, 2017, NYSE Arca, Inc. (the “Exchange,” “NYSE Arca,” or the “Corporation”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new NYSE Arca Equities Rule 8.900 to permit it to list and trade Managed Portfolio Shares, which are shares of actively managed exchange-traded funds (“ETFs”) for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. In addition, the Exchange proposes to list and trade shares of the following under proposed NYSE Arca Equities Rule 8.900: Royce Pennsylvania ETF; Royce Premier ETF; and Royce Total Return ETF. The proposed 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new NYSE Arca Equities Rule 8.900 for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of Managed Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁴

In addition to the above-mentioned proposed rule changes, the Exchange proposes to list and trade shares (“Shares”) of the following under proposed NYSE Arca Equities Rule 8.900: Royce Pennsylvania ETF; Royce Premier ETF; and Royce Total Return ETF (each, a “Fund” and, collectively, the “Funds”).

Proposed Listing Rules

Proposed Rule 8.900(a) provides that the Corporation will consider for trading, whether by listing or pursuant to UTP, Managed Portfolio Shares that meet the criteria of Rule 8.900.

Proposed Rule 8.900(b) provides that Rule 8.900 is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with Rule 8.900, or unless the context otherwise requires, the rules and procedures of the Corporation’s Board of Directors shall be applicable to the

⁴ A Managed Portfolio Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3) (“Index ETFs”), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

trading on the Corporation of such securities. Proposed Rule 8.900(b) provides further that Managed Portfolio Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Corporation.

Proposed Definitions

Proposed Rule 8.900(c)(1) defines the term “Managed Portfolio Share” as a security that (a) is issued by a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; and (b) when aggregated in a number of shares equal to a Redemption Unit or multiples thereof, may be redeemed at the request of an Authorized Participant (as defined in the Investment Company’s Form N-1A filed with the SEC), which Authorized Participant will be paid, through its own separate confidential account established for its benefit, a portfolio of securities and/or cash with a value equal to the next determined net asset value (“NAV”).

Proposed Rule 8.900(c)(2) defines the term “Verified Intraday Indicative Value (“VIIV”) as the estimated indicative value of a Managed Portfolio Share based on all of the issuer’s holdings as of the close of business on the prior business day, priced and disseminated in one second intervals, and subject to validation by a pricing verification agent of the Investment Company that is responsible for comparing multiple independent pricing sources to establish the accuracy of the VIIV.

Proposed Rule 8.900(c)(3) defines the term “Redemption Unit” as a specified number of Managed Portfolio Shares.

Proposed Rule 8.900(c)(4) defines the term “Reporting Authority” in respect of a particular series of Managed Portfolio Shares as a reporting service designated by the issuer as the official source for calculating and reporting information relating to such series, including, but not limited to, the VIIV, NAV, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 8.900(d) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Rule 8.900(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Corporation will

establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Corporation. In addition, proposed Rule 8.900(d)(1)(B) provides that the Corporation will obtain a representation from the issuer of each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time.⁵

Proposed Rule 8.900(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the following continued listing criteria:

- Proposed Rule 8.900(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by one or more major market data vendors every second during the Exchange's Core Trading Session (as defined in NYSE Arca Equities Rule 7.34).

- Proposed Rule 8.900(d)(2)(B) provides that the Corporation will maintain surveillance procedures for securities listed under Rule 8.900 and will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5(m) of, a series of Managed Portfolio Shares under any of the following circumstances:

- (i) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares;

- (ii) if the value of the VIIV is no longer calculated or made available to all market participants at the same time;

- (iii) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Corporation is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Securities and Exchange Commission to the Investment Company with respect to the series of Managed Portfolio Shares;

- (iv) if any of the continued listing requirements set forth in Rule 8.900 are not continuously maintained;

- (v) if the Corporation submits a rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of a series of Managed Portfolio Shares and any of the statements or representations regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or

- (vi) if such other event shall occur or condition exists which, in the opinion of the Corporation, makes further dealings on the Corporation inadvisable.

Proposed Rule 8.900(d)(2)(C) provides that, upon notification to the Corporation by the Investment Company or its agent that (i) the prices from the multiple independent pricing sources to be validated by the Investment Company's pricing verification agent differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV, or (ii) that the VIIV of a series of Managed Portfolio Shares is not being priced and disseminated in one-second intervals, as required, the Corporation shall halt trading in the Managed Portfolio Shares as soon as practicable. Such halt in trading shall continue until the Investment Company or its agent notifies the Corporation that the prices from the independent pricing sources no longer differ by more than 25 basis points for 60 seconds or that the VIIV is being priced and disseminated as required. The Investment Company or its agent shall be responsible for monitoring that the VIIV is being priced and disseminated as required and whether the prices to be validated from multiple independent pricing sources differ by more than 25 basis points for 60 seconds. With respect to series of Managed Portfolio Shares trading on the Corporation pursuant to unlisted trading privileges, if a temporary interruption occurs in the pricing or dissemination of the applicable Verified Intraday Indicative Value and the listing market halts trading in such series, the Corporation, upon notification by the listing market of such halt due to such temporary interruption, will halt trading in such series. In addition, if the Exchange becomes aware that the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants.

Proposed Rule 8.900(d)(2)(D) provides that, upon termination of an Investment

Company, the Corporation requires that Managed Portfolio Shares issued in connection with such entity be removed from Corporation listing.

Proposed Rule 8.900(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company prospectus.

Proposed Rule 8.900(e), which relates to limitation of Corporation liability, provides that neither the Corporation, the Reporting Authority, nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the VIIV; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Corporation, the Reporting Authority or any agent of the Corporation, or any act, condition, or cause beyond the reasonable control of the Corporation, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Commentary .01 to NYSE Arca Equities Rule 8.900 provides that the Corporation will file separate proposals under Section 19(b) of the Act before the listing and trading of Managed Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. Proposed Commentary .02 to NYSE Arca Equities Rule 8.900 provides that transactions in Managed Portfolio Shares will occur only during the Core Trading Session as specified in NYSE Arca Equities Rule 7.34(a)(2).

Proposed Commentary .03 to NYSE Arca Equities Rule 8.900 provides that

⁵NYSE Arca Equities Rule 7.18(d)(2) ("Halts of Derivative Securities Products Listed on the NYSE Arca Marketplace") provides that, with respect to Derivative Securities Products listed on the NYSE Arca Marketplace for which a net asset value is disseminated, if the Exchange becomes aware that the net asset value is not being disseminated to all market participants at the same time, it will halt trading in the affected Derivative Securities Product on the NYSE Arca Marketplace until such time as the net asset value is available to all market participants.

the Exchange will implement written surveillance procedures for Managed Portfolio Shares.

Proposed Commentary .04 to NYSE Arca Equities Rule 8.900 provides that Authorized Participants (as defined in the Investment Company's Form N-1A filed with the SEC) or non-Authorized Participant market makers redeeming Managed Portfolio Shares will sign an agreement with an agent ("Trusted Agent") to establish a confidential account for the benefit of such Authorized Participant or non-Authorized Participant market maker that will receive all consideration from the issuer in a redemption. A Trusted Agent may not disclose the consideration received in a redemption except as required by law or as provided in the Investment Company's Form N-1A, as applicable.

Proposed Commentary .05 to NYSE Arca Equities Rule 8.900 provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is affiliated with a broker-dealer, or if any Trusted Agent is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser or Trusted Agent will erect and maintain a "fire wall" between the investment adviser or Trusted Agent and (i) personnel of the broker-dealer or broker-dealer affiliate, as applicable, or (ii) the Authorized Participant or non-Authorized Participant market maker, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.⁶

Key Features of Managed Portfolio Shares

While funds issuing Managed Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Managed Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Equities Rule 8.600⁷ and for which a "Disclosed

Portfolio" is required to be disseminated at least once daily,⁸ the portfolio for an issue of Managed Portfolio Shares will be disclosed quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.⁹ Second, in connection with the redemption of shares in "Redemption Unit" size (as described below), the delivery of any portfolio securities in kind will generally be effected through a "Confidential Account" (as described below) for the benefit of the redeeming "Authorized Participant" (as described below in "Creation and Redemption of Shares") without disclosing the identity of such securities to the Authorized Participant.

For each series of Managed Portfolio Shares, an estimated value—the VIIV—that reflects an estimated intraday value of a fund's portfolio will be disseminated. With respect to the Funds, the VIIV will be based upon all of a Fund's holdings as of the close of the prior business day and will be widely disseminated by one or more major market data vendors every second during the Exchange's Core Trading Session (normally, 9:30 a.m. to 4:00

issues of Managed Fund Shares under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR-NYSEArca-2010-118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). More recently, the Commission approved a proposed rule change to adopt generic listing standards for Managed Fund Shares. Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR-NYSEArca-2015-110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

⁸ NYSE Arca Equities Rule 8.600(c)(2) defines the term "Disclosed Portfolio" as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. NYSE Arca Equities Rule 8.600(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

⁹ A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act, and is required to file its complete portfolio schedules for the first and third fiscal quarters on Form N-Q under the 1940 Act, within 60 days of the end of the quarter. Form N-Q requires funds to file the same schedules of investments that are required in annual and semi-annual reports to shareholders. These forms are available to the public on the Commission's Web site at www.sec.gov.

p.m., Eastern Time ("E.T.")). The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares on a daily basis and will provide a close estimate of that value throughout the trading day. The VIIV should not be viewed as a "real-time" update of the NAV per Share of each Fund because the VIIV may not be calculated in the same manner as the NAV, which will be computed once a day, generally at the end of the business day. Unlike the VIIV, which will be based on consolidated midpoint of the bid ask spread, the NAV per Share will be based on the closing price on the primary market for each portfolio security. If there is no closing price for a particular portfolio security, such as when it the [sic] subject of a trading halt, a Fund will use fair value pricing. That fair value pricing will be carried over to the next day's VIIV until the first trade in that stock is reported unless the "Adviser" (defined below) deems a particular portfolio security to be illiquid and/or the available ongoing pricing information unlikely to be reliable. In such case, that fact will be immediately disclosed on each Fund's Web site, including the identity and weighting of that security in a Fund's portfolio, and the impact of that security on VIIV calculation, including the fair value price for that security being used for the calculation of that day's VIIV.

The Exchange, after consulting with various Lead Market Makers that trade exchange-traded funds ("ETFs") on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the VIIV as long as a VIIV is disseminated every second, market makers have knowledge of a Fund's means of achieving its investment objective, and market makers are permitted to engage in "Bona Fide Arbitrage," as described below. The Exchange believes that market makers will employ Bona Fide Arbitrage in addition to risk-management techniques such as "statistical arbitrage," which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.¹⁰ This ability

¹⁰ Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of

⁶ The Exchange will propose applicable NYSE Arca Equities listing fees for Managed Portfolio Shares in the NYSE Arca Equities Schedule of Fees and Charges via a separate proposed rule change.

⁷ The Commission has previously approved listing and trading on the Exchange of a number of

should permit market makers to make efficient markets in an issue of Managed Portfolio Shares without precise knowledge of a Fund's underlying portfolio.¹¹

To enable market makers to engage in Bona Fide Arbitrage, on each "Business Day" (as defined below), before commencement of trading in Shares on the Exchange, the Funds will provide to a "Trusted Agent" (as described below) of each Authorized Participant or "Non-Authorized Participant Market Maker"¹² the identities and quantities of portfolio securities that will form the basis for a Fund's calculation of NAV per Share at the end of the Business Day, as well as the names and quantities of the instruments comprising a "Creation Basket" and the estimated "Balancing Amount" (if any) (as described below), for that day. This information will permit Authorized Participants to purchase "Creation Units" through an in-kind transaction with a Fund, as described below.

In addition, Authorized Participants will be able to instruct the Trusted Agent to buy or sell portfolio securities during the day and thereby engage in Bona Fide Arbitrage throughout the trading day. For example, if an Authorized Participant believes that Shares of a Fund are trading at a price that is higher than the value of its underlying portfolio based on the VIIV, the Authorized Participant may sell Shares short and instruct the Trusted Agent to buy portfolio securities for its Confidential Account. When the market price of a Fund's Shares falls in line with the value of the portfolio, the Authorized Participant can then close out its positions in both the Shares and the portfolio securities. The Authorized Participant's purchase of the portfolio securities into its Confidential Account, combined with the sale of Shares, may also create downward pressure on the price of Shares and/or upward pressure on the price of the portfolio securities,

securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making correction where warranted.

¹¹ Authorized Participants and other broker-dealers that enter into their own separate Confidential Accounts shall have enough information to ensure that they are able to comply with applicable regulatory requirements. For example, for purposes of net capital requirements, the maximum Securities Haircut applicable to the securities in a Creation Basket, as determined under Rule 15c3-1, will be disclosed daily on each Fund's Web site.

¹² A Non-Authorized Participant Market Maker is a market participant that makes a market in Shares, but is not an Authorized Participant.

bringing the market price of Shares and the value of a Fund's portfolio securities closer together. Similarly, an Authorized Participant could buy Shares and instruct the Trusted Agent to sell the underlying portfolio securities from its Confidential Account in an attempt to profit when a Fund's Shares are trading at a discount to its portfolio. The Authorized Participant's purchase of a Fund's Shares in the secondary market, combined with the sale of the portfolio securities from its Confidential Account, may also create upward pressure on the price of Shares and/or downward pressure on the price of portfolio securities, driving the market price of Shares and the value of a Fund's portfolio securities closer together. The Adviser represents that it understands that, other than the confidential nature of the account, this process is identical to how many Authorized Participants currently arbitrage existing traditional ETFs.

Because other market participants can also engage in arbitrage activity without using the creation or redemption processes described above, the Confidential Account structure will be made available to any Non-Authorized Participant Market Maker that is willing to establish a Confidential Account. In that case, if a market participant believes that a Fund is overvalued relative to its underlying assets, the market participant may sell short Shares and instruct its Trusted Agent to buy portfolio securities in its Confidential Account, wait for the trading prices to move toward parity, and then close out the positions in both the Shares and the portfolio securities to realize a profit from the relative movement of their trading prices. Similarly, a market participant could buy Shares and instruct the Trusted Agent to sell the underlying portfolio securities in an attempt to profit when a Fund's Shares are trading at a discount to a Fund's underlying or reference assets. Any investor that is willing to transact through a broker-dealer that has established a Confidential Account with a Trusted Agent will have the same opportunity to engage in arbitrage activity. As discussed above, the trading of a Fund's Shares and the Fund's portfolio securities may bring the prices of a Fund's Shares and its portfolio assets closer together through market pressure. This type of arbitrage is referred to herein as "Bona Fide Arbitrage."

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when

it is mispriced relative to the others. For Managed Portfolio Shares, market makers, in addition to employing Bona Fide Arbitrage, may use the knowledge of a Fund's means of achieving its investment objective, as described in the applicable Fund registration statement, to construct a hedging proxy for a Fund to manage a market maker's quoting risk in connection with trading Fund Shares. Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and Shares of a Fund, buying and selling one against the other over the course of the trading day. They will evaluate how their proxy performed in comparison to the price of a Fund's Shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers not intending to utilize Bona Fide Arbitrage have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

Description of the Funds and the Trust

The Shares of each Fund will be issued by Precidian ETFs Trust [sic] ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.¹³ The investment adviser to the Trust will be Precidian Funds LLC (the "Adviser"). Foreside Fund

¹³ The Trust will be registered under the 1940 Act. On April 5, 2017, the Trust filed a registration statement on Form N-1A under the Securities Act of 1933 (the "1933 Act") (15 U.S.C. 77a), and under the 1940 Act relating to the Funds (File Nos. 333-171987 and 811-22524) [sic] (the "Registration Statement"). The Trust filed an amended Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-14405), dated September 21, 2015 [sic] ("Exemptive Application"). The Shares will not be listed on the Exchange until an order ("Exemptive Order") under the 1940 Act has been issued by the Commission with respect to the Exemptive Application. Investments made by the Funds will comply with the conditions set forth in the Exemptive Order. The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement and the Exemptive Application.

Services, LLC (“Distributor”) will serve as the distributor of the Fund’s Shares.

As noted above, proposed Commentary .05 to NYSE Arca Equities Rule 8.900 provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is affiliated with a broker-dealer, or if any Trusted Agent is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser or Trusted Agent will erect and maintain a “fire wall” between the investment adviser or Trusted Agent and (i) personnel of the broker-dealer or broker-dealer affiliate, as applicable, or (ii) the Authorized Participant or non-Authorized Participant market maker, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Personnel who make decisions on the Investment Company’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.¹⁴ In addition, proposed Commentary .05 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund’s portfolio. Proposed Commentary .05 to Rule 8.900 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .05 in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable

¹⁴ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not registered as a broker-dealer or affiliated with a broker-dealer.

In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The portfolio for each Fund will consist of long and/or short positions in U.S.-listed securities and shares issued by other U.S.-listed ETFs¹⁵ All exchange-listed equity securities in which the Funds will invest will be listed and traded on U.S. national securities exchanges.

Description of the Funds

Royce Pennsylvania ETF

The Royce Pennsylvania ETF will invest primarily in US- listed equity securities of small-cap companies with stock market capitalizations up to \$3 billion that Royce & Associates, LP (“Royce”), the Fund’s investment sub-adviser, believes are trading below its estimate of their current worth. The Fund may invest in other investment companies that invest in equity securities. The Fund may sell securities to, among other things, secure gains, limit losses, redeploy assets into what Royce deems to be more promising opportunities, and/or manage cash levels in the Fund’s portfolio.

Royce Premier ETF

The Royce Premier ETF will invest in a limited number of US- listed equity securities of primarily small-cap companies with stock market capitalizations from \$1 billion to \$3 billion at the time of investment. The Fund may invest in other investment companies that invest in equity securities. The Fund may sell securities

¹⁵ For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depository Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs in which a Fund will invest all will be listed and traded on national securities exchanges. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged (e.g., 2X, –2X, 3X or –3X) ETFs.

to, among other things, secure gains, limit losses, redeploy assets into what Royce deems to be more promising opportunities, and/or manage cash levels in the Fund’s portfolio.

Royce Total Return ETF

The Royce Total Return ETF will invest primarily in dividend-paying US-listed securities of small-cap companies with stock market capitalizations up to \$3 billion that it believes are trading below its estimate of their current worth. The Fund may invest in other investment companies that invest in equity securities. The Fund may sell securities to, among other things, secure gains, limit losses, redeploy assets into what Royce deems to be more promising opportunities, and/or manage cash levels in the Fund’s portfolio.

Other Investments

While each Fund, under normal market conditions, will invest primarily in U.S.-listed securities, as described above, each Fund may invest its remaining assets in other securities and financial instruments, as described below.

According to the Registration Statement, each Fund may enter into repurchase agreements.

It will be the policy of the Trust to enter into repurchase agreements only with recognized securities dealers, banks and Fixed Income Clearing Corporation, a securities clearing agency registered with the Commission.

Each Fund may invest up to 5% of its total assets in warrants, rights and options.

Each Fund may invest a portion of its assets in cash or cash equivalents.¹⁶

Each Fund may invest in the securities of other investment companies (including money market funds) to the extent allowed by law.

Investment Restrictions

Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at

¹⁶ For purposes of this filing, cash equivalents include short-term instruments (instruments with maturities of less than 3 months) of the following types: (i) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers’ acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

the time of investment),¹⁷ consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are invested in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.¹⁸

According to the Registration Statement, each Fund will seek to qualify for treatment as a Regulated Investment Company ("RIC") under the Internal Revenue Code.¹⁹

The Shares of each Fund will conform to the initial and continued listing criteria under proposed Rule 8.900. The Funds will not invest in futures, forwards or swaps.

Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. While a Fund may invest in inverse ETFs, a Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

The Funds will not invest in non-U.S.-listed securities.

¹⁷ In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

¹⁸ The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933). The Commission recently codified this long standing position in Rule 22e-4. See Investment Company Act Release No. 32315 (October 13, 2016), 81 FR 82142 (November 18, 2016) (adopting requirements for investment company liquidity risk management programs).

¹⁹ 26 U.S.C. 851.

Creations and Redemptions of Shares

In connection with the creation and redemption of Creation Units (defined below), the delivery or receipt of any portfolio securities in-kind will be required to be effected through a separate confidential brokerage account (i.e., a Confidential Account) with a Trusted Agent,²⁰ which will be a bank or broker-dealer such as JP Morgan Chase, State Street Bank and Trust, or Bank of New York Mellon, for the benefit of an Authorized Participant.²¹ An Authorized Participant will generally be a Depository Trust Company ("DTC") Participant that has executed a "Participant Agreement" with the Distributor with respect to the creation and redemption of Creation Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective Authorized Participant's Confidential Account, for the benefit of the Authorized Participant without disclosing the identity of such securities to the Authorized Participant. Each Trusted Agent will be given, before the commencement of trading each Business Day (defined below), both the holdings of a Fund and their relative weightings for that day. This information will permit an Authorized Participant, or other market participant that has established a Confidential Account with a Trusted Agent, to instruct the Trusted Agent to buy and sell positions in the portfolio securities to permit Bona Fide Arbitrage, as defined above.

Shares of each Fund will be issued in Creation Units of 25,000 or more Shares. The Funds will offer and sell Creation Units through the Distributor on a continuous basis at the NAV per Share next determined after receipt of an order in proper form. The NAV per Share of each Fund will be determined as of the close of regular trading on the New York Stock Exchange ("NYSE") on each day that the NYSE is open. A "Business Day" is defined as any day that the Trust is open for business. The Funds will sell and redeem Creation Units only on Business Days. Applicants anticipate that the initially [sic] price of a Share will range from \$20 to \$30, and that the

²⁰ Each Authorized Participant shall enter into its own separate Confidential Account with a Trusted Agent.

²¹ In the event that a Trusted Agent is a bank, the bank will be required to have an affiliated broker-dealer to accommodate the execution of hedging transactions on behalf of the holder of a Confidential Account.

price of a Creation Unit initial [sic] will range from \$1,000,000 to \$5,000,000.

In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances described in the Registration Statement, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption Instruments").²² On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the "Creation Basket."²³

As noted above, each Authorized Participant will be required to establish a Confidential Account with a Trusted Agent and transact with each Fund through that Confidential Account.²⁴ Therefore, before the commencement of trading on each Business Day, the Trusted Agent of each Authorized Participant will be provided, on a confidential basis, with a list of the names and quantities of the instruments comprising a Creation Basket, as well as the estimated Balancing Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the

²² The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the 1933 Act.

²³ In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis, whether for a given day or a given order, the key consideration will be the benefit that would accrue to a Fund and its investors. The Adviser represents that the Funds do not currently anticipate the need to sell or redeem Creation Units entirely on a cash basis.

²⁴ The Adviser represents that transacting through a Confidential Account is similar to transacting through any broker-dealer account, except that the Trusted Agent will be bound to keep the names and weights of the portfolio securities confidential. To comply with certain recordkeeping requirements applicable to Authorized Participants, the Trusted Agent will maintain and preserve, and make available to the Commission, certain required records related to the securities held in the Confidential Account.

published Creation Basket. The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing are referred to as the "Portfolio Deposit."

Placement of Purchase Orders

Each Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs.

Each Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received. The Trust will sell and redeem Shares on each such day and will not suspend the right of redemption or postpone the date of payment or satisfaction upon redemption for more than seven days, other than as provided by Section 22(d) of the 1940 Act.

Shares may be purchased from a Fund by an Authorized Participant for its own account or for the benefit of a customer. The Distributor will furnish acknowledgements to those placing such orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in a Fund's prospectus or Statement of Additional Information ("SAI"). Purchases of Shares will be settled in-kind or cash for an amount equal to the applicable NAV per Share purchased plus applicable "Transaction Fees," as discussed below.

The NAV of each Fund is expected to be determined once each Business Day at a time determined by the Trust's Board of Directors ("Board"), currently anticipated to be as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) (the "Valuation Time"). Each Fund will establish a cut-off time ("Order Cut-Off Time") for purchase orders in proper form. To initiate a purchase of Shares, an Authorized Participant must submit to the Distributor an irrevocable order to purchase such Shares after the most recent prior Valuation Time but not later than the Order Cut-Off Time. The Order Cut-Off Time for a Fund may be its Valuation Time, or may be prior to the Valuation Time if the Board determines that an earlier Order Cut-Off Time for purchase of Shares is necessary and is in the best interests of Fund shareholders.

All orders to purchase Creation Units must be received by the Distributor no later than the scheduled closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) in each case on the date such order is placed ("Transmittal Date") in order for the purchaser to receive the NAV per Share

determined on the Transmittal Date. In the case of custom orders, the order must be received by the Distributor, no later than 3:00 p.m. E.T., or such earlier time as may be designated by the Funds and disclosed to Authorized Participants.²⁵ The Distributor will maintain a record of Creation Unit purchases and will send out confirmations of such purchases.²⁶

Transaction Fees

The Trust may impose purchase or redemption transaction fees ("Transaction Fees") in connection with the purchase or redemption of Shares from the Funds. The exact amounts of any such Transaction Fees will be determined by the Adviser. The purpose of the Transaction Fees is to protect the continuing shareholders against possible dilutive transactional expenses, including operational processing and brokerage costs, associated with establishing and liquidating portfolio positions, including short positions, in connection with the purchase and redemption of Shares.

Purchases of Shares—Secondary Market

Only Authorized Participants and their customers will be able to acquire Shares at NAV directly from a Fund through the Distributor. The required payment must be transferred in the manner set forth in a Fund's SAI by the specified time on the third DTC settlement day following the day it is transmitted (the "Transmittal Date"). These investors and others will also be able to purchase Shares in secondary market transactions at prevailing market prices. Each Fund will reserve the right to reject any purchase order at any time.

Redemption

Beneficial Owners may sell their Shares in the secondary market. Alternatively, investors that own enough Shares to constitute a Redemption Unit (currently, 25,000 Shares) or multiples thereof may redeem those Shares through the Distributor, which will act as the Trust's representative for redemption. The size of a Redemption Unit will be subject to change. Redemption orders for Redemption Units or multiples thereof must be placed by or through an Authorized Participant.

²⁵ A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis, as provided in the Registration Statement.

²⁶ A Trusted Agent will provide information related to creations and redemption of Creation Units to the Financial Industry Regulatory Authority ("FINRA") upon request.

Authorized Participant Redemption

The Shares may be redeemed to a Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an Authorized Participant ("AP Redemption Order"). Each Fund will establish an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of the Fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Trust in the manner specified below before the Order Cut-Off Time. To initiate an AP Redemption Order, an Authorized Participant must submit to the Distributor an irrevocable order to redeem such Redemption Unit after the most recent prior Valuation Time but not later than the Order Cut-Off Time. The Order Cut-Off Time for a Fund may be its Valuation Time, or may be prior to the Valuation Time if the Board determines that an earlier Order Cut-Off Time for redemption of Redemption Units is necessary and is in the best interests of Fund shareholders.

Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e-2 thereunder, the right to redeem will not be suspended, nor payment upon redemption delayed, except for: (1) Any period during which the NYSE is closed other than customary weekend and holiday closings, (2) any period during which trading on the NYSE is restricted, (3) any period during which an emergency exists as a result of which disposal by a Fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a Fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

Redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash.²⁷ The Participant Agreement signed by each Authorized Participant will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption.²⁸ Each Authorized

²⁷ It is anticipated that any portion of a Fund's NAV attributable to appreciated short positions will be paid in cash, as securities sold short are not susceptible to in-kind settlement. The value of other positions not susceptible to in-kind settlement may also be paid in cash.

²⁸ The terms of each Confidential Account will be set forth as an exhibit to the applicable Participant Agreement, which will be signed by each Authorized Participant. The terms of the Confidential Account will provide that the trust be formed under applicable state laws; the Custodian may act as Trusted Agent of the Confidential Account; and the Trusted Agent will be paid by the

Participant will be required to open a Confidential Account with a Trusted Agent in order to facilitate orderly processing of redemptions. While a Fund will generally distribute securities in-kind, the Adviser may determine from time to time that it is not in a Fund's best interests to distribute securities in-kind, but rather to sell securities and/or distribute cash. For example, the Adviser may distribute cash to facilitate orderly portfolio management in connection with rebalancing or transitioning a portfolio in line with its investment objective, or if there is substantially more creation than redemption activity during the period immediately preceding a redemption request, or as necessary or appropriate in accordance with applicable laws and regulations. In this manner, a Fund can use in-kind redemptions to reduce the unrealized capital gains that may, at times, exist in a Fund by distributing low cost lots of each security that a Fund needs to dispose of to maintain its desired portfolio exposures. Shareholders of a Fund would benefit from the in-kind redemptions through the reduction of the unrealized capital gains in a Fund that would otherwise have to be realized and, eventually, distributed to shareholders.

The redemption basket will consist of the same securities for all Authorized Participants on any given day subject to the Adviser's ability to make minor adjustments to address odd lots, fractional shares, tradeable sizes or other situations.

After receipt of a Redemption Order, a Fund's custodian ("Custodian") will typically deliver securities to the Confidential Account on a pro rata basis (which securities are determined by the Adviser) with a value approximately equal to the value of the Shares²⁹ tendered for redemption at the Cut-Off time. The Custodian will make delivery of the securities by appropriate entries on its books and records transferring ownership of the securities to the Authorized Participant's Confidential Account, subject to delivery of the Shares redeemed. The Trusted Agent of the Confidential Account will in turn liquidate, hedge or otherwise manage the securities based on instructions from

the Authorized Participant.³⁰ If the Trusted Agent is instructed to sell all securities received at the close on the redemption date, the Trusted Agent will pay the liquidation proceeds net of expenses plus or minus any cash balancing amount to the Authorized Participant through DTC.³¹ The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a Fund pro rata. To the extent a Fund distributes portfolio securities through an in-kind distribution to more than one Confidential Account for the benefit of that account's Authorized Participant, each Fund expects to distribute a pro rata portion of the portfolio securities selected for distribution to each redeeming Authorized Participant.

If the Authorized Participant would receive a security that it is restricted from receiving, a Fund will deliver cash equal to the value of that security.

To address odd lots, fractional shares, tradeable sizes or other situations where dividing securities is not practical or possible, the Adviser may make minor adjustments to the pro rata portion of portfolio securities selected for distribution to each redeeming Authorized Participant on such Business Day.

The Trust will accept a Redemption Order in proper form. A Redemption Order is subject to acceptance by the Trust and must be preceded or accompanied by an irrevocable commitment to deliver the requisite number of Shares. At the time of settlement, an Authorized Participant will initiate a delivery of the Shares versus subsequent payment against the proceeds, if any, of the sale of portfolio securities distributed to the applicable Confidential Account plus or minus any cash balancing amounts, and less the expenses of liquidation.

Net Asset Value

The NAV per Share of a Fund will be computed by dividing the value of the

³⁰ An Authorized Participant will issue execution instructions to the Trusted Agent and be responsible for all associated profit or losses. Like a traditional ETF, the Authorized Participant has the ability to sell the basket securities at any point during normal trading hours.

³¹ Under applicable provisions of the Internal Revenue Code, the Authorized Participant is expected to be deemed a "substantial owner" of the Confidential Account because it receives distributions from the Confidential Account. As a result, all income, gain or loss realized by the Confidential Account will be directly attributed to the Authorized Participant. In a redemption, the Authorized Participant will have a basis in the distributed securities equal to the fair market value at the time of the distribution and any gain or loss realized on the sale of those Shares will be taxable income to the Authorized Participant.

net assets of a Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of Shares of a Fund outstanding, rounded to the nearest cent. Expenses and fees, including, without limitation, the management, administration and distribution fees, will be accrued daily and taken into account for purposes of determining NAV. Interest and investment income on the Trust's assets accrue daily and will be included in the Fund's total assets. The NAV per Share for a Fund will be calculated by a Fund's administrator ("Administrator") and determined as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) on each day that the NYSE is open.

Shares of exchange-listed equity securities and exchange-listed options will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the securities are primarily traded at the time of valuation. Repurchase agreements will be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service. Money market funds will be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service. Cash equivalents will generally be valued on the basis of independent pricing services or quotes obtained from brokers and dealers. Options not listed on an exchange, rights and warrants will be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service.

When last sale prices and market quotations are not readily available, are deemed unreliable or do not reflect material events occurring between the close of local markets and the time of valuation, investments will be valued using fair value pricing as determined in good faith by the Adviser under procedures established by and under the general supervision and responsibility of the Trust's Board of Trustees. Investments that may be valued using fair value pricing include, but are not limited to: (1) Securities that are not actively traded; (2) securities of an issuer that becomes bankrupt or enters into a restructuring; and (3) securities whose trading has been halted or suspended.

The frequency with which each Fund's investments will be valued using fair value pricing will primarily be a function of the types of securities and other assets in which the respective Fund will invest pursuant to its investment objective, strategies and

Authorized Participant a fee negotiated directly between the Authorized Participants and the Trusted Agent(s).

²⁹ If the NAV of the Shares redeemed differs from the value of the securities delivered to the applicable Confidential Account, the Fund will pay a cash balancing amount to compensate for the difference between the value of the securities delivered and the NAV.

limitations. If the Funds invest in open-end management investment companies registered under the 1940 Act (other than ETFs), they may rely on the NAVs of those companies to value the shares they hold of them.

Valuing the Funds' investments using fair value pricing involves the consideration of a number of subjective factors and thus the prices for those investments may differ from current market valuations. Accordingly, fair value pricing could result in a difference between the prices used to calculate NAV and the prices used to determine a Fund's VIIV, which could result in the market prices for Shares deviating from NAV. In cases where the fair value price of the security is materially different from the pricing data provided by the independent pricing sources and the Adviser determined that the ongoing pricing information is not likely to be reliable, the fair value will be used for calculation of the VIIV, and a Fund's Custodian will be instructed to disclose the identity and weight of the fair valued securities, as well as the fair value price being used for the security.

Availability of Information

The Funds' Web site (www.precidianfunds.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each Fund that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior Business Day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),³² and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site and information will be publicly available at no charge.

As noted above, a mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act, and is required to file its complete portfolio schedules for the first and third fiscal quarters on Form N-Q under the 1940

Act, within 60 days of the end of the quarter. Form N-Q requires funds to file the same schedules of investments that are required in annual and semi-annual reports to shareholders. The Trust's SAI and each Fund's shareholder reports will be available free upon request from the Trust. These documents and forms may be viewed on-screen or downloaded from the Commission's Web site at www.sec.gov.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Updated price information for U.S. exchange-listed equity securities is available through major market data vendors or securities exchanges trading such securities. The intraday, closing and settlement prices of money market funds, repurchase agreements, reverse repurchase agreements and cash equivalents will be readily available from published or other public sources, or major market data vendors such as Bloomberg and Thomson Reuters. The NAV of any investment company security investment will be readily available on the Web site of the relevant investment company and from major market data vendors. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the VIIV, as defined in NYSE Arca Equities Rule 8.900(c)(3) and as described further below, will be widely disseminated by one or more major market data vendors at least every second during the Exchange's Core Trading Session.

Dissemination of the Verified Intraday Indicative Value

The VIIV, which is approximate value of each Fund's investments on a per Share basis, will be disseminated every second during the Exchange's Core Trading Session. The VIIV should not be viewed as a "real-time" update of NAV because the VIIV may not be calculated in the same manner as NAV, which is computed once per day.

The Exchange will disseminate the VIIV for each Fund in one-second intervals during the Core Trading Session, through the facilities of the CTA. The VIIV is essentially an intraday NAV calculation every second during the Core Trading Session. Each Fund will adopt procedures governing the calculation of the VIIV and will bear

responsibility for the accuracy of its calculation. Pursuant to those procedures, the VIIV will include all accrued income and expenses of a Fund and will assure that any extraordinary expenses, booked during the day, that would be taken into account in calculating a Fund's NAV for that day are also taken into account in calculating the VIIV. For purposes of the VIIV, securities held by a Fund will be valued throughout the day based on the mid-point between the disseminated current national best bid and offer. The Adviser represents that, by utilizing the mid-point pricing for purposes of VIIV calculation, stale prices are eliminated and more accurate representation of the real time value of the underlying securities is provided to the market. Specifically, quotations based on the mid-point of bid/ask spreads more accurately reflect current market sentiment by providing real time information on where market participants are willing to buy or sell securities at that point in time. Using quotations rather than last sale information addresses concerns regarding the staleness of pricing information of less actively traded securities. Because quotations are updated more frequently than last sale information especially for inactive securities, the VIIV will be based on more current and accurate information. The use of quotations will also dampen the impact of any momentary spikes in the price of a portfolio security.

Each Fund will utilize two independent pricing sources to provide two independent sources of pricing information. Each Fund will also utilize a "Pricing Verification Agent" and establish a computer-based protocol that will permit the Pricing Verification Agent to continuously compare the two data streams from the independent pricing agents sources on a real time basis.³³ A single VIIV will be disseminated publicly for each Fund; however, the Pricing Verification Agent will continuously compare the public VIIV against a non-public alternative intra-day indicative value to which the Pricing Verification Agent has access. If it becomes apparent that there is a material discrepancy between the two data streams, the Exchange will be notified and have the ability to halt trading in a Fund until the discrepancy is resolved. Each Fund's Board will review the procedures used to calculate the VIIV and maintain its accuracy as

³² The Bid/Ask Price of a Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of a Fund's NAV. The records relating to Bid/Ask Prices will be retained by each Fund and its service providers.

³³ A Fund's Custodian will provide, on a daily basis, the constituent basket file comprised of all securities plus any cash to the independent pricing agent(s) for purposes of pricing.

appropriate, but not less than annually. The specific methodology for calculating the VIIV will be disclosed on each Fund's Web site.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.³⁴ Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.900(d)(2)(C), which sets forth circumstances under which Shares of the Funds will be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace only during the Core Trading Session in accordance with NYSE Arca Equities Rule 7.34(a)(2). As provided in NYSE Arca Equities Rule 7.6, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.900. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Act,³⁵ as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per Share of each Fund will be calculated daily and will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect

violations of Exchange rules and applicable federal securities laws.³⁶ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying stocks, ETFs and exchange-listed options with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying stocks, ETFs and exchange-listed options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³⁷

The Funds' Adviser will make available daily to FINRA and the Exchange the portfolio holdings of each Fund in order to facilitate the performance of the surveillances referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) NYSE Arca Equities Rule 9.2(a),

³⁶ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

³⁷ For a list of the current members of ISG, see www.isgportal.org.

which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) [sic] how information regarding the VIIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,³⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,³⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 8.900 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Managed Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 8.900(d) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Rule 8.900(d)(1) provides that, for each series of Managed Portfolio Shares, the Corporation will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading. In addition, the Corporation will obtain a representation from the issuer of each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time. Proposed Rule 8.900(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the specified continued

³⁸ 15 U.S.C. 78f(b).

³⁹ 15 U.S.C. 78f(b)(5).

³⁴ See NYSE Arca Equities Rule 7.12.

³⁵ See 17 CFR 240.10A-3.

listing criteria, as described above. Proposed Rule 8.900(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by one or more major market data vendors every second during the Exchange's Core Trading Session. Proposed Rule 8.900(d)(2)(B) provides that the Corporation will maintain surveillance procedures for securities listed under Rule 8.900 and will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5(m) of, a series of Managed Portfolio Shares under any of the circumstances set forth in proposed Rules 8.900(d)(2)(B)(i) through (vi), as described above, including if any of the continued listing requirements set forth in Rule 8.900 are not continuously maintained (proposed Rule 8.900(d)(2)(B)(iv)), and if the Corporation submits a rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of a series of Managed Portfolio Shares and any of the statements or representations regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained (proposed Rule 8.900(d)(2)(B)(v)). Proposed Rule 8.900(d)(2)(C) provides that, upon notification to the Corporation by the Investment Company or its agent that (i) the prices from the multiple independent pricing sources to be validated by the Investment Company's pricing verification agent differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV, or (ii) that the VIIV of a series of Managed Portfolio Shares is not being priced and disseminated in one-second intervals, as required, the Corporation shall halt trading in the Managed Portfolio Shares as soon as practicable. Such halt in trading shall continue until the Investment Company or its agent notifies the Corporation that the prices from the independent pricing sources no longer differ by more than 25 basis points for 60 seconds or that the VIIV is being priced and disseminated as required. Proposed Commentary .05 to NYSE Arca Equities Rule 8.900 provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is affiliated with a broker-dealer, or if any Trusted Agent is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser or Trusted Agent will erect and maintain a "fire wall" between the investment adviser or

Trusted Agent and (i) personnel of the broker-dealer or broker-dealer affiliate, as applicable, or (ii) the Authorized Participant or non-Authorized Participant market maker, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio Personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.

With respect to the proposed listing and trading of Shares of the Funds, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.900. Price information for the exchange-listed equity securities held by the Funds will be available through major market data vendors or securities exchanges listing and trading such securities. All exchange-listed equity securities held by the Funds will be listed on national securities exchanges. The listing and trading of such securities is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission. The Funds will primarily hold U.S.-listed securities or ETFs. A Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage. The Funds will not invest in non-U.S.-listed securities. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying stocks and ETFs with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying stocks and ETFs from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. A

Trusted Agent will provide information related to creations and redemption of Creation Units to FINRA upon request. The Funds' Adviser will make available daily to FINRA and the Exchange the portfolio holdings of each Fund in order to facilitate the performance of the surveillances referred to above.

The Exchange, after consulting with various Lead Market Makers that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the VIIV, market makers have knowledge of a fund's means of achieving its investment objective even without daily disclosure of a fund's underlying portfolio, and are able to engage in Bona Fide Arbitrage. The Exchange believes that market makers will employ risk-management techniques such as Bona Fide Arbitrage in addition to "statistical arbitrage," which is currently used throughout the financial services industry, to make efficient markets in exchange traded products.⁴⁰ This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders, in addition to employing Bona Fide Arbitrage, use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how their proxy performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers who anticipate employing statistical arbitrage more often than Bona Fide Arbitrage, have indicated to the Exchange that, after the first few days of trading, there will be sufficient data to run a statistical

⁴⁰ See note 10, *supra*.

analysis which will lead to spreads being tightened substantially around VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The Lead Market Makers also indicated that, as with some other new exchange-traded products, spreads may be generally wider in the early days of trading and would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time relative to the published VIIV and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by Lead Market Makers were that a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly portfolio disclosure, the capacity to engage in Bona Fide Arbitrage and the ability to create shares in creation unit size.

The Commission's concept release regarding "Actively Managed Exchange-Traded Funds" highlighted several issues that could impact the Commission's willingness to authorize the operation of an actively-managed ETF, including whether effective arbitrage of the ETF shares exists.⁴¹ The Concept Release identifies the transparency of a fund's portfolio and the liquidity of the securities in a fund's portfolio as central to effective arbitrage. With respect to the Funds, the Funds' use of U.S.-listed securities and the ability of market makers to engage in Bona Fide Arbitrage provide adequate liquidity as well as the ability to engage in riskless arbitrage. Additionally, certain existing ETFs with portfolios of foreign securities have shown their ability to trade efficiently in the secondary market at approximately their NAV even though they do not provide opportunities for riskless arbitrage transactions during much of the trading day.⁴² Such ETFs have been shown to

have pricing characteristics very similar to ETFs that can be arbitrated in this manner. For example, index-based ETFs containing securities that trade during different trading hours than the ETF, such as ETFs that hold Asian stocks, have demonstrated efficient pricing characteristics notwithstanding the inability of market professionals to engage in "riskless arbitrage" with respect to the underlying portfolio for most, or even all, of the U.S. trading day when Asian markets are closed. Pricing for shares of such ETFs is efficient because market professionals are still able to hedge their positions with offsetting, correlated positions in derivative instruments during the entire trading day.

The real-time dissemination of a fund's VIIV, the ability for market makers to engage in [sic] riskless arbitrage through the Bona Fide Arbitrage mechanism, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade shares in a manner that will not lead to significant deviations between the shares' Bid/Ask Price and NAV.

The pricing efficiency with respect to trading a series of Managed Portfolio Shares will generally rest on the ability of market participants to arbitrage between the shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders not employing Bona Fide Arbitrage can buy shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being "long" or "short" shares through such trading and will hedge such risk wholly or partly by simultaneously taking

asset at a higher price, thereby generating a profit on the difference. Hedging, on the other hand, involves managing risk by purchasing or selling a security or instrument that will track or offset the value of another security or instrument. Arbitrage and hedging are both used to manage risk; however, they involve different trading strategies.

positions in correlated assets⁴³ or by netting the exposure against other, offsetting trading positions—much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI, along with the dissemination of the VIIV every second, should permit professional investors to engage easily in this type of hedging activity.⁴⁴

With respect to trading of Shares of the Funds, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for a Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on a Fund's actual portfolio holdings, (2) the securities in which the Funds plan to

⁴³ Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

⁴⁴ With respect to trading in Shares of the Funds, market participants would manage risk in a variety of ways. In addition to Bona Fide Arbitrage, it is expected that market participants will be able to determine how to trade Shares at levels approximating the VIIV without taking undue risk by gaining experience with how various market factors (e.g., general market movements, sensitivity of the VIIV to intraday movements in interest rates or commodity prices, etc.) affect VIIV, and by finding hedges for their long or short positions in Shares using instruments correlated with such factors. The Adviser expects that market participants will initially determine the VIIV's correlation to a major large capitalization equity benchmark with active derivative contracts, such as the Russell 1000 Index, and the degree of sensitivity of the VIIV to changes in that benchmark. For example, using hypothetical numbers for illustrative purposes, market participants should be able to determine quickly that price movements in the Russell 1000 Index predict movements in a Fund's VIIV 95% of the time (an acceptably high correlation) but that the VIIV generally moves approximately half as much as the Russell 1000 Index with each price movement. This information is sufficient for market participants to construct a reasonable hedge—buy or sell an amount of futures, swaps or ETFs that track the Russell 1000 equal to half the opposite exposure taken with respect to Shares. Market participants will also continuously compare the intraday performance of their hedge to a Fund's VIIV. If the intraday performance of the hedge is correlated with the VIIV to the expected degree, market participants will feel comfortable they are appropriately hedged and can rely on the VIIV as appropriately indicative of a Fund's performance.

⁴¹ See Investment Company Act Release No. 25258 (November 8, 2001) (the "Concept Release").

⁴² The Adviser represents that the mechanics of arbitrage and hedging differ. Prior Rule 10a-1 and Regulation T under the Act both describe arbitrage as either buying and selling the same security in two different markets or buying and selling two different securities, one of which is convertible into the other. This is also known as a "riskless arbitrage" transaction in that the transaction is risk free since it generally consists of buying an asset at one price and simultaneously selling that same

invest are generally highly liquid and actively traded and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

The real-time dissemination of a Fund's VIIV, the ability for market makers to engage is [sic] riskless arbitrage through the Bona Fide Arbitrage mechanism, together with the ability of Authorized Participants to create and redeem each day at the NAV, will be crucial for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Bid/Ask Price and NAV.⁴⁵

In a typical index-based ETF, it is standard for Authorized Participants to know what securities must be delivered in a creation or will be received in a redemption. For Managed Portfolio Shares, however, Authorized Participants do not need to know the securities comprising the portfolio of a Fund since creations and redemptions are handled through the Confidential Account mechanism. The Adviser represents that the in-kind creations and redemptions through a Confidential Account will preserve the integrity of the active investment strategy and eliminate the potential for "free riding" or "front-running," while still providing investors with the advantages of the ETF structure.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of an issue of Managed Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV and [sic] will be made available to all market participants at the same time. Investors can also obtain a fund's SAI, shareholder reports, and its Form N-CSR, Form N-Q and Form N-SAR. A fund's SAI and shareholder reports will be available free upon request from the applicable fund, and those documents and the Form N-CSR, Form N-Q and Form N-SAR may be viewed on-screen or downloaded from the Commission's Web site. In addition, with respect to the Funds, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency.

⁴⁵ The statements in the Statutory Basis section of this filing relating to pricing efficiency, arbitrage, and activities of market participants, including market makers and Authorized Participants, are based on representations by the Adviser and review by the Exchange.

Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the intra-day value of the Shares of a Fund, which is the VIIV as defined in proposed NYSE Arca Equities Rule 8.900(c)(3), will be widely disseminated every second throughout the Exchange's Core Trading Session by one or more major market data vendors. The Web site for the Funds will include a form of the prospectus for the Funds that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.900(d)(2)(C), which sets forth circumstances under which Shares of the Funds will be halted. In addition, as noted above, investors will have ready access to the VIIV, and quotation and last sale information for the Shares. The Shares will conform to the initial and continued listing criteria under proposed Rule 8.900. The Funds will not invest in futures, forwards or swaps. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. While a Fund may invest in inverse ETFs, a Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs. The Funds will not invest in non-U.S. listed securities.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the VIIV and

quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs, and would introduce additional competition among various ETF products to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2017-36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2017-36. This

file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2017-36 and should be submitted on or before May 25, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-08980 Filed 5-3-17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80555; File No. SR-OCC-2017-004]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Concerning Enhancements to OCC's Stock Loan Programs

April 28, 2017.

On February 28, 2017, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2017-004 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the **Federal Register** on March 14, 2017.³ The Commission did not receive any comment letters on the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposed Rule Change

OCC operates two Stock Loan Programs—the Hedge Program and Market Loan Program—in which a participating clearing member can lend an agreed-upon number of shares of eligible stock⁴ to another clearing member in exchange for an agreed-upon value of U.S. dollar cash collateral and then novate the loan to OCC for clearing.⁵ The Hedge Program permits clearing members to bilaterally execute stock loans and negotiate collateralization and other terms before submitting such stock loans to OCC for novation and clearing.⁶ The Market Loan Program is operationally similar to the Hedge Program, but it permits clearing members to execute stock loans through a multilateral loan market.⁷ In each case, upon completion of the novation process, OCC, in its capacity as a central counterparty, guarantees return of (i) loaned stock, or that stock's value, to the lending clearing member, and (ii) the value of cash collateral to the borrowing clearing member.⁸ In addition, OCC makes mark-to-market margin payments on a daily basis to ensure stock loans remain fully collateralized.

OCC proposes a number of changes to the Stock Loan Programs and its Rules

governing those Programs.⁹ First, to improve trade certainty and transparency concerning clearing member exposures, OCC proposes amendments to its rules governing the Stock Loan Programs to do the following: (1) Require clearing members to have policies and procedures to reconcile stock loan positions each business day; (2) state explicitly that the controlling record for stock loan positions for margin and other purposes is OCC's "golden" record; and (3) provide that stock loan positions remain in effect until OCC's records reflect stock loan terminations. Second, to mitigate risks that may arise in the event of a clearing member suspension, OCC proposes amendments to its rules governing the Stock Loan Programs to do the following: (1) Provide a two-day trading window in which clearing members must execute close-out transactions, also known as "buy-in" or "sell-out" transactions; (2) provide broad authority for OCC to use reasonable prices to settle close-out transactions; and (3) permit OCC to close out and re-establish the matched-book stock loan positions of a suspended Hedge Program clearing member through termination by offset and "re-matching" with other clearing members. Each of these proposals is discussed in more detail below.

A. Proposed Measures To Improve Trade Certainty and Transparency

OCC proposes three amendments to the rules governing its Stock Loan Programs that are intended to improve trade certainty and transparency for clearing members and OCC.

1. Daily Reconciliation of Stock Loan Positions

Clearing members that participate in the Hedge Program and the Market Loan Program execute and terminate stock loans on a bilateral basis. Following execution or termination of stock loans, OCC requires clearing members to promptly report stock loans directly to OCC, or to facilitate such reporting to OCC through the Depository Trust Corporation ("DTC"), ensuring OCC accepts stock loans for clearing and records the novation or termination for margin and other purposes. Under the current trade-reporting process, clearing members may fail to report (or to have DTC report) stock loans to OCC in a timely manner, increasing uncertainty in the novation process and decreasing transparency with respect to OCC's

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-80323 (March 8, 2017), 82 FR 13690 (March 14, 2017) (File No. SR-OCC-2017-004) ("Notice").

⁴ See OCC Rules 2202 and 2202A (providing that stock loans under the Hedge Program and the Market Loan Program, respectively, must effect transfer only of "Eligible Stock," as defined in Article I of OCC's By-laws). OCC permits clearing members to execute stock loans involving 6,191 eligible securities as March 29, 2017, available at <https://www.theocc.com/webapps/stock-loan-eligible-securities>.

⁵ The Hedge Program is governed by Article XXI of OCC's By-Laws and Chapter XXII of OCC's Rules. The Market Loan Program is governed by Article XXIA of OCC's By-Laws and Chapter XXIIA of OCC's Rules. The Commission understands that OCC cleared approximately 10–15% of the overall U.S.-equities stock loan market through the two programs, as of November 2015.

⁶ The Commission understands that the Hedge Program accounts for approximately 95% of cleared stock loan volume at OCC, as of November 2015.

⁷ Automated Equity Finance Markets, Inc. is the sole loan market through which clearing members can execute stock loans in the Market Loan Program.

⁸ See OCC Rules 2202(b) and 2202A(b).

⁹ For a more detailed description of the specific rule changes OCC is proposing, see Notice, *supra* note 3.

⁴⁶ 17 CFR 200.30-3(a)(12).

stock loan positions and obligations as a central counterparty and guarantor. The current process thereby presents risk management risks both to OCC and clearing members.

To address these risk management risks, OCC proposes to require each clearing member to have adequate policies and procedures to perform daily reconciliations of stock loan positions against OCC's records and to resolve stock loan discrepancies, if any, by 9:30 a.m. Central Time the following business day.¹⁰ These proposed rule changes, according to OCC, would improve trade certainty and transparency for clearing members participating in the Hedge Program and the Market Loan Program and thereby reduce operational and other risks for OCC and clearing members.

2. Controlling Records for Stock Loan Positions

To support and supplement the proposed daily reconciliation requirements for clearing member participation in the Stock Loan Programs, OCC proposes to explicitly state in its rules that OCC's stock loan records constitute the controlling records for margin and other purposes. Specifically, the proposed rules would specify that OCC's records, which OCC refers to as the "golden copy" records, prevail in the event of a conflict with clearing member records and that clearing members must continue to perform on obligations relating to open stock loan positions identified in the golden copy records.¹¹ The proposed rules, according to OCC, support trade certainty and transparency in the Hedge and Market Loan Programs.

3. Termination Records for Stock Loan Positions

Finally, to conform OCC's stock loan termination provisions to the proposed changes relating to controlling records described above, OCC proposes rule changes to clarify that stock loans would be considered terminated for margin and other purposes only when OCC's records reflect termination of the stock loan.¹² OCC states that these conforming changes also would support trade certainty and transparency in the Stock Loan Programs by ensuring consistency among and within the

different rules applicable to the Stock Loan Programs.

B. Proposed Measures To Mitigate Stock Loan Risks in the Event of a Clearing Member Suspension

In addition to the proposals intended to improve trade certainty and transparency, the proposed rule change also proposes three amendments to address certain risks that may arise in the event that OCC suspends a clearing member participant in the Stock Loan Programs.

1. Stock Loan Close-Out Timeframe in the Event of a Clearing Member Suspension

Under current Stock Loan Program rules, OCC may seek to close out a suspended clearing member's stock loan positions by instructing non-suspended clearing member counterparties to execute close-out transactions within a reasonable period of time.¹³ Although non-suspended clearing members must be prepared to defend the timeliness of close-out transactions under current rules, clearing members are not required to execute close-out transactions based on OCC's instructions within a specific period of time. Accordingly, if non-suspended clearing members execute buy-in or sell-out transactions over an extended period of time following OCC's close-out instruction, OCC incurs a risk that close-out prices may vary significantly from the prices used to mark the stock loan positions to market for margin purposes. OCC's credit exposure, in part, depends on the significance of these price differences relative to the suspended clearing member's available margin resources.

To mitigate these risks, OCC proposes to require clearing members to execute close-out transactions within a fixed two-day trading window in the event of a clearing member suspension. More specifically, OCC proposes to require non-suspended clearing members to execute close-out transactions by the end of the business day following OCC's instruction to close out stock loans with the suspended clearing member. If a non-suspended clearing member is unable to execute the close-out transactions within that two-day timeframe, OCC itself would terminate the clearing member's relevant stock loans and effect settlement based on the market price of the underlying

securities, as determined by OCC. According to OCC, the proposed changes are intended to ensure that non-suspended clearing members execute close-out transactions in a timeframe consistent with OCC's two-day liquidation assumption for stock loan margin purposes, which should reduce OCC's credit exposure from significant differences between clearing member-effectuated close-out prices and the prices used to collect mark-to-market payments from the suspended clearing member.

2. Reasonable Prices for Stock Loan Close-Out Transactions in the Event of a Clearing Member Suspension

Under current rules, OCC may seek to close out a suspended clearing member's stock loan positions by instructing non-suspended clearing member counterparties to execute buy-in or sell-out transactions. These close-out transactions must be executed in a "commercially reasonable manner."¹⁴ If a borrowing clearing member is suspended and unable to return securities under a stock loan, OCC may instruct the lending clearing member to execute a "buy-in" transaction for the number of shares in the stock loan's underlying security that would be necessary to return the lending clearing member to its position prior to entering into the stock loan with the suspended clearing member. If the lending clearing member is suspended and unable to return the value of collateral, OCC similarly may instruct the borrowing clearing member to execute a "sell-out" transaction for the number of shares in the underlying security that would be necessary to return the borrowing clearing member to its position prior to entering into the stock loan. In each case, the non-suspended clearing member's stock loan position is terminated and settled based on the price reported for the close-out transaction.

To incentivize "reasonable" pricing of close-out transactions in the event of a clearing member suspension, OCC proposes to provide itself authority to withdraw from a clearing member's account the value of any difference between clearing member-reported prices and "reasonable" close-out transaction prices, as determined by OCC based on an assessment of market conditions at the time of execution.¹⁵

¹⁰ See Proposed Rule 2205 of the Hedge Program and Proposed Rule 2205A of the Market Loan Program.

¹¹ See Proposed Articles XXI and XXIA of OCC's By-Laws.

¹² See Proposed Rule 2209 in the Hedge Program and Proposed Rule 2209A in the Market Loan Program.

¹³ More specifically, Rules 2209(b) and (f) and 2211 of the Hedge Program, and Rules 2209A(b) and (c) and 2211A of the Market Loan Program require clearing members to execute close-out transactions in a "commercially reasonable manner" and to be prepared to defend the timing, prices, and costs of such transactions.

¹⁴ *Id.*

¹⁵ See Proposed Rule 2211. The proposal provides that a clearing member may demonstrate that a close-out transaction was executed at a "reasonable" price by providing evidence that the transaction fell within the underlying stock's trading range on the date of execution. *Id.* To the

This proposed price-substitution authority, according to OCC, would incentivize non-suspended clearing members to execute and report close-out transactions in a commercially reasonable manner.¹⁶

3. Re-Matching in the Event of a Hedge Clearing Member Suspension

Under OCC's current rules, in the event of a clearing member suspension, OCC can fully unwind a suspended Hedge Clearing Member's matched-book positions¹⁷ only if it recalls all borrowed securities from specific borrowing clearing members and returns those securities to specific lending clearing members. Under current rules, this recall-and-return process is operationally complex because the nature of these unwinds would require OCC to (i) effect transfer of significant numbers of securities to significant numbers of non-suspended clearing members; and (ii) settle an equal number of payments against final settlement prices. Moreover, during this recall-and-return process, the non-suspended clearing members may experience unexpected imbalances in their overall stock loan positions, resulting in increased margin requirements or price risks relating to re-execution of the stock loans in a potentially distressed market.¹⁸

To address these operational complexities and the potential consequences for both OCC and its clearing members, OCC proposes new rules that would permit it to terminate a suspended Hedge Clearing Member's matched-book stock loans in the Hedge Program by offset and to "re-match" the positions of the non-suspended counterparties according to priorities established by OCC's matching algorithm.¹⁹ According to OCC, re-

extent a clearing member impacts the market price of an underlying security through close-out transactions, OCC, in its discretion, may consider such impact in its assessment of market conditions at the time of execution.

¹⁶ If the close-out transaction is not executed within the two-day period provided in Proposed Rule 2212, however, the stock loan would be terminated and settled based on OCC's marking price at the end of the period.

¹⁷ See definition of "Matched-Book Positions" in Article I of OCC's By-laws. A clearing member that maintains a "matched book" for stock loans generally borrows no more of a specific security than it lends to other clearing members in the program. See also Notice, *supra* note 3 at 8.

¹⁸ OCC's present margin methodology nets matched-book stock loan positions prior to calculating clearing member exposures. Thus, a non-suspended clearing member's margin requirements may increase on account of the temporary stock loan imbalances resulting from a clearing member suspension.

¹⁹ OCC's matching algorithm would implement priorities in OCC's Proposed Rule 2212(d), which

matching stock loans pursuant to an algorithm would facilitate orderly and efficient termination and re-establishment of stock loans involving a suspended Hedge Clearing Member, thereby mitigating operational and pricing risks that may arise for non-suspended clearing members during the recall-and-return process.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act²⁰ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act²¹ and Rules 17Ad-22(e)(13)²² and 17Ad-22(e)(23)²³ thereunder, as described in detail below.

A. Consistency With Section 17A(b)(3)(F) of the Act

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,²⁴ which requires, among other things, that the rules of a clearing agency be designed to do the following: (1) Promote the prompt and accurate clearance and settlement of securities transactions; and (2) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes each of the proposals in OCC's proposed rule change discussed above is consistent with promoting the prompt and accurate clearance and settlement of securities transactions and assuring the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

First, the Commission believes that OCC's three proposals to improve trade certainty and transparency in the Stock Loan Programs are consistent with promoting the prompt and accurate clearance and settlement of securities transactions as well as assuring the safeguarding of securities and funds which are in OCC's custody or control, or for which it is responsible. The

establishes an order of operations based on the size of stock loan positions and the existence of master securities lending agreements between the non-suspended clearing members.

²⁰ 15 U.S.C. 78s(b)(2)(C).

²¹ 15 U.S.C. 78q-1(b)(3)(F).

²² 17 CFR 240.17Ad-22(e)(13).

²³ 17 CFR 240.17Ad-22(e)(23).

²⁴ 15 U.S.C. 78q-1(b)(3)(F).

Commission believes that OCC's proposal to require clearing members to implement adequate policies and procedures to reconcile stock loan positions with OCC's records on a daily basis would promote the prompt and accurate clearance and settlement of stock loan transactions, and assure the safeguarding of securities and funds exchanged through the programs, by reducing financial and other risks to OCC and clearing members. The Commission also believes that OCC's proposal to provide explicitly in its rulebook that its stock loan records would prevail in the event of a conflict with clearing member records, and that clearing members must continue to perform on all stock loan positions reflected in OCC's records, promotes the prompt and accurate clearance and settlement of securities transactions and assures the safeguarding of securities and funds by encouraging clearing members to understand, manage, and promptly report stock loan transactions.

Finally, the Commission believes that OCC's proposal to provide that stock loan positions remain in effect until OCC's records reflect stock loan terminations promotes the prompt and accurate clearance and settlement of stock loan transactions and assures the safeguarding of securities and funds exchanged through the programs by emphasizing that OCC's records supersede the records of clearing members and further encouraging clearing members to understand, manage, and promptly report stock loan transactions. The Commission therefore finds these specific proposals are consistent with promoting the prompt and accurate clearance and settlement of securities transactions and assuring the safeguarding of securities and funds which are in OCC's custody or control, or for which it is responsible as guarantor in the Stock Loan Programs.

Second, the Commission believes that OCC's three proposals to mitigate certain risks in the event of a clearing member suspension are consistent with promoting the prompt and accurate clearance and settlement of securities transactions and assuring the safeguarding of securities and funds which are in OCC's custody or control, or for which it is responsible. The proposal to provide a two-day trading window in which clearing members must execute close-out transactions, or opt for mandatory settlement, is consistent with promoting the prompt and accurate clearance and settlement of securities transactions and assuring the safeguarding of securities and funds by requiring non-suspended clearing members to complete close-out

transactions in a timeframe that is consistent with OCC's liquidation assumptions. The proposed alignment of the close-out period with OCC's liquidation assumptions mitigates OCC's credit risks by reducing the risk that close-out prices vary too significantly from the prices used to mark the suspended clearing member's stock loans to market. OCC's proposed price-substitution authority also promotes the prompt and accurate clearance and settlement of stock loan transactions and assures the safeguarding of securities and funds under the programs by further encouraging non-suspended clearing members to execute close-out transactions in a commercially reasonable manner, thereby reducing financial risk to OCC.

Finally, the proposed rule changes in the Hedge Program to permit OCC to terminate and re-establish a suspended clearing member's positions through offset and "re-match" promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds by facilitating orderly and efficient termination and re-establishment of stock loans involving a suspended clearing member, which mitigates operational and pricing risks that may arise for OCC and clearing members during the recall-and-return process. The Commission therefore finds that these aspects of the proposal are consistent with promoting prompt and accurate clearance and settlement of securities transactions and assuring the safeguarding of securities and funds which are in OCC's custody or control, or for which it is responsible.

Based on the conclusions discussed above, the Commission finds that OCC's proposed rule changes are consistent with promoting the prompt and accurate clearance and settlement of securities transactions and assuring the safeguarding of securities and funds which are in OCC's custody or control, or for which it is responsible as a guarantor in the Stock Loan Programs. Accordingly, the Commission finds that the proposals are consistent with Section 17A(b)(3)(F) of the Act.²⁵

B. Consistency With Rules 17Ad-22(e)(13) and (e)(23) of the Act

The Commission finds that OCC's proposals are consistent with Rules (e)(13) and (e)(23) under the Act.²⁶ Rule 17Ad-22(e)(13) under the Act requires each covered clearing agency to

establish, implement, maintain, and enforce policies and procedures reasonably designed to, among other things, ensure it has the authority and operational capacity to take timely action to contain losses and continue to meet its obligations in the event of a clearing member default.²⁷ More generally, Rule 17Ad-22(e)(23) under the Act requires covered clearing agencies to establish, implement, maintain, and enforce policies and procedures reasonably designed to, among other things, provide for the public disclosure of all relevant rules and material procedures, including key aspects of default rules and procedures.²⁸

The Commission believes that the proposed changes relating to clearing member suspension are consistent with Rule 17Ad-22(e)(13) under the Act. By proposing a fixed trading window in which clearing members must either execute close-out transactions relating to a clearing member suspension or opt for OCC-mandated settlements, OCC is seeking new authority that the Commission believes will better ensure that OCC can take timely actions to contain suspension-related losses and continue to meet stock loan-related obligations in the Stock Loan Programs. The Commission further believes that the proposed authority permitting OCC to withdraw the value of any difference between the clearing member-reported prices and OCC-determined close-out prices likewise better ensures that OCC can contain suspension-related losses, as clearing members would be further incentivized to execute timely close-out transactions at market prices. Finally, the Commission believes that the proposal relating to re-matching-in-suspension better ensures that OCC has authority and operational capacity to contain losses and meet obligations to clearing members in the Hedge Program, in particular through new rules and mechanisms that reduce the operational, credit, and re-execution risks attendant to the recall-and-return process. The Commission therefore believes OCC's proposal is consistent with Rule 17Ad-22(e)(13) under the Act.

The Commission also believes that OCC's proposals are consistent with Rule 17Ad-22(e)(23) under the Act. Each aspect of OCC's proposed rule change is proposed to be disclosed publicly in OCC's rules governing the Stock Loan Programs, including the key suspension-related aspects of its rules providing for close-out transaction timeframes, new price-substitution

authority, and termination and re-matching-in-suspension. The Commission therefore believes that OCC's proposal is consistent with Rules 17Ad-22(e)(23) under the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A of the Act²⁹ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁰ that the proposed rule change (SR-OCC-2017-004) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-08982 Filed 5-3-17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80551; File No. SR-FINRA-2017-006]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change To Amend Rule 6191 To Implement an Anonymous, Grouped Masking Methodology for Over-the-Counter Activity in Connection With Web Site Data Publication of Appendix B Data Pursuant to the Regulation NMS Plan To Implement a Tick Size Pilot Program

April 28, 2017.

I. Introduction

On March 3, 2017, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend FINRA Rule 6191 to implement an anonymous, grouped masking methodology for over-the-counter ("OTC") activity in connection with Web site publication of Appendix B data pursuant to the Regulation NMS

²⁹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁵ 15 U.S.C. 78q-1(b)(3)(F).

²⁶ 17 CFR 240.17Ad-22(e)(13), and 17 CFR 240.17Ad-22(e)(23).

²⁷ 17 CFR 240.17Ad-22(e)(13).

²⁸ 17 CFR 240.17Ad-22(e)(23).

Plan to Implement a Tick Size Pilot Program (“Plan” or “Pilot”).³ The proposed rule change was published for comment in the **Federal Register** on March 15, 2017.⁴ The Commission received three comment letters on the proposed rule change.⁵ This order approves the proposed rule change.

II. Description of the Proposal

FINRA Rule 6191(b) (Compliance with Data Collection Requirements) implements the data collection and Web site publication requirements of the Plan. FINRA Rule 6191(b)(2)(A) describes the data collection and submission requirements for data that is required under Appendix B.I. and B.II. of the Plan. FINRA Rule 6191(b)(2)(B) provides, among other things, that FINRA will publish data collected pursuant to FINRA Rule 6191(b)(2)(A) on its Web site within 120 calendar days following month end at no charge,⁶ and that such publication will not identify the Trading Center that generated the data.

FINRA Rule 6191(b)(3)(A) describes the data collection and submission requirements for data specified under Appendix B.IV. of the Plan. FINRA Rule 6191(b)(3)(C) provides, among other things, that FINRA will publish data collected pursuant to FINRA Rule 6191(b)(3)(A) on its Web site within 120 calendar days following month end at no charge,⁷ and that such publication will not identify the Trading Center that generated the data.

FINRA proposes new Supplementary Material .15 to FINRA Rule 6191 to implement an anonymous, grouped masking methodology for Appendix B.I., B.II. and B.IV. data (“Appendix B data”). FINRA also proposes to incorporate the OTC Trading Centers for which Chicago Stock Exchange, Inc. (“CHX”) is the designated examining authority (“DEA”) into the anonymous, grouped masking methodology and publish OTC-wide statistics for

Appendix B data on the FINRA Web site.⁸

A. Grouping Methodology

FINRA proposes to establish ATS and non-ATS categories. Thereafter, FINRA would assign OTC Trading Centers into groups of five to twenty-five, using an undisclosed methodology to assign each Trading Center to a group.

The Trading Center group assignments will not be published and generally will remain unchanged for the duration of the data publication period, with the exception of the entrance of a new Trading Center (*i.e.*, new FINRA member). FINRA will assign an anonymized identifier for each group that will remain unchanged for the duration of the data publication period. The anonymized identifier will be used for all Appendix B data sets. The number of Trading Centers assigned to each group will not specifically be disclosed; however, as noted above, each group will contain between five and twenty-five market participant identifiers (“MPIDs”). In addition, for each day’s statistics, the number of MPIDs in each group with activity in any Pilot Security for that day will be published.

B. Appendix B.I. Data Aggregation Methodology

FINRA proposes to aggregate the Appendix B.I. data by aggregating statistics within each group by Pilot Security for each trading day. The methodology used for computing the statistics at the group level will be the same methodology used to compute these statistics at the Trading Center level in the non-public version of the data (and in the public version of the exchange data).⁹ Specifically, FINRA would calculate group-level sums for statistics that are quantity counts¹⁰ and

use all underlying data within a group to calculate statistics requiring averages or weighted averages.¹¹ Data will be aggregated separately for each order type and subcategory, and will not be aggregated across order types or subcategories.

C. Appendix B.II. Data Aggregation Methodology

Appendix B.II. data includes order-level statistics; thus, FINRA proposes that all individual orders be displayed for all Trading Centers within a group, with each order attributed to the group rather than the underlying Trading Center. In addition, Appendix B.II. order information would be displayed in chronological order based on time of order receipt.

D. Appendix B.IV. Data Aggregation Methodology

FINRA proposes to aggregate Appendix B.IV. data by aggregating statistics within each group by trading day by summing the statistics of all Market Maker activity represented within the group. The number of Market Makers would be displayed as the unique number of Market Makers¹² across all Trading Centers within the group.

III. Summary of Comment Letters

The Commission received three comment letters expressing general support for the proposed rule change.¹³ One commenter praised “the significant steps taken to improve the masking methodology” for the Pilot data.¹⁴ Another commenter commended FINRA for “taking into account the feedback received from market participants and working to devise an approach that seeks to address identified confidentiality concerns while still maintaining the usefulness of the publicly available data.”¹⁵

One commenter, however, expressed a continued concern related to FINRA’s

³ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”). Unless otherwise specified, capitalized terms used in this order are defined as set forth in the Plan.

⁴ See Securities Exchange Act Release No. 80193 (Mar. 9, 2017), 82 FR 13901 (“Notice”).

⁵ See Letters to Brent J. Fields, Secretary, Commission from Alisa McCoy, dated March 13, 2017 (“McCoy Letter”); Christopher W. Bok, Financial Information Forum, dated April 5, 2017 (“FIF Letter”); and Stephen John Berger, Managing Director, Government & Regulatory Policy, Citadel, dated April 7, 2017 (“Citadel Letter”).

⁶ FINRA Rule 6191.12 provides that the Web site publication of Appendix B data shall commence on April 28, 2017.

⁷ *Id.*

⁸ In connection with the instant filing, FINRA and CHX requested exemptive relief from the Plan to permit the publication on the FINRA Web site of data relating to OTC activity pursuant to Appendix B.I., B.II. and B.IV. using an anonymous, grouped masking methodology. See Letter from Marcia E. Asquith, Executive Vice President, Board and External Relations, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated March 2, 2017. The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, has granted FINRA and CHX a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letters and noted herein. See letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Marcia E. Asquith, Executive Vice President, Board and External Relations, FINRA, dated April 28, 2017 (“SEC Exemption Letter”).

⁹ See Tick Size Appendix B and C Statistics FAQs (available at <http://www.finra.org/sites/default/files/Tick-Size-Pilot-Appendix-B-and-C-FAQ.pdf>).

¹⁰ See *e.g.*, Appendix B.I.a(7) (cumulative number of orders).

¹¹ See *e.g.*, Appendix B.I.a(28) (the share weighted average realized spread for executions of orders); and Appendix B.I.a(29) (the received share-weighted average percentage for shares not displayable as of order receipt). FINRA will calculate averages for all price variables and percentages.

¹² As provided in FINRA Rule 6191.11, FINRA will provide a count of the number of Market Makers used in the participation calculations. Thus, if a single unique Market Maker traded on multiple Trading Centers within the same masking group, for the Appendix B.IV. count of unique Market Makers on a given trading day, FINRA will count this activity as attributed to one unique Market Maker.

¹³ One letter reads in its entirety “That is great idea since all of the compromise.” See McCoy Letter.

¹⁴ See FIF Letter.

¹⁵ See Citadel Letter.

proposed grouping methodology.¹⁶ Specifically, this commenter believed that the proposal to break ATS and non-ATS OTC Trading Centers into groupings of five to twenty-five MPIDs may allow interested parties the opportunity to discern the identity of the Trading Center, perhaps by comparing the published data to Rule 605 reports of OTC volume data published by FINRA. This commenter also expressed concern that the disclosure of the number of active MPIDs in each group could potentially lead to the identification of broker-dealer Trading Centers. As an alternative, the commenter suggested that all OTC Trading Centers be aggregated into either a single ATS or non-ATS category.

Another commenter recommended eliminating the proposed daily publication of the number of MPIDs with activity in each group of Trading Centers.¹⁷ This commenter suggested that FINRA reconsider whether this additional information is necessary to provide a useful data set to the public because, “in practice, FINRA will thus be disclosing information regarding the number of trading centers assigned to each group.” In this commenter’s view, FINRA must ensure that the additional data cannot be used to “undermine the confidentiality of FINRA’s methodology for assigning trading centers to particular groups or the actual group assignments.”

IV. Discussion and Commission’s Findings

After careful review of the proposed rule change and the comment letters, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.¹⁸ Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of the Act,²⁰ which requires that FINRA rules not impose any burden on

competition that is not necessary or appropriate.

In the Approval Order, the Commission noted that the Pilot is, by design, an objective, data-driven test that should “provide measurable data that should facilitate the ability of the Commission, the public and market participants to review and analyze the effect of tick size on the trading, liquidity and market quality of securities of smaller capitalization companies.”²¹ The Commission further stated that the Plan should provide “a data-driven approach to evaluate whether certain changes to the market structure for Pilot Securities would be consistent with the Commission’s mission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation.”²² To that end, the Plan provides for the collection, submission and publication of data specified in Appendix B of the Plan. The Plan further provides that the data to be made publicly available not identify the Trading Center that generated the data. As discussed below, the Commission believes that FINRA’s proposal is consistent with the requirements of the Act and would further the purpose of the Plan to provide measurable data.

FINRA, as a Participant in the Plan, has an obligation to comply, and enforce compliance by its members, with the terms of the Plan. Rule 608(c) of Regulation NMS provides that “[e]ach self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or participant.”²³ Proposed FINRA Rule 6191, Supplementary Material .15 would establish a means to anonymize the identities of OTC Trading Centers when publishing the data set forth in Appendix B to the Plan. The Commission also believes that the proposal is consistent with the Act because it is designed to assist FINRA in meeting its regulatory obligations pursuant to Rule 608 of Regulation NMS and the Plan.

FINRA’s proposal seeks to address the provision in the Plan that individual OTC Trading Centers not be identified in the published data. FINRA proposes to create ATS and non-ATS categories and then assign OTC Trading Centers into groups of five to twenty-five. In addition, FINRA proposes to aggregate and publish data from those OTC Trading Centers for which CHX is DEA. Thereafter, FINRA would publish Appendix B data for OTC Trading

Centers by group on its Web site using an anonymized identifier.

The Commission notes that commenters had previously raised concerns about the publication of OTC Trading Centers’ Appendix B data on a disaggregated basis.²⁴ FINRA noted that it filed the proposed rule change to mitigate the confidentiality concerns of the commenters.

As noted above, while commenters were generally supportive of FINRA’s proposal, some believe FINRA should do more to mitigate confidentiality concerns related to OTC Trading Centers’ Appendix B data. These commenters suggested that FINRA eliminate the sub-groupings of ATS and non-ATS OTC Trading Centers, or the daily identification of the number of active MPIDs in each group. While these commenters broadly suggested this information might be used to identify the group to which a particular OTC Trading Center was assigned, they did not articulate why the identification of that group, if possible, could reveal proprietary information or otherwise harm the interests of the OTC Trading Center. In this regard, the Commission notes that the activity of each OTC Trading Center would be combined with that of at least four other OTC Trading Centers, and would be at least four months old.

The Commission believes that FINRA’s proposal to develop an anonymous, grouped masking methodology is reasonably designed to address concerns that the activity of individual Trading Centers might be identified. The Commission notes that the identities of individual Trading Centers within each group would not be disclosed and the activity of each Trading Center would be aggregated with the activity of four to twenty-four other Trading Centers. At the same time, the Commission believes that the maintenance of these groups, and the daily identification of the number of active MPIDs in each group, should substantially enhance the usefulness of the Pilot data for academics and others seeking to analyze it. For example, establishing smaller groups of OTC Trading Centers should increase the ability of researchers to control for group fixed effects, and thereby help

²⁴ See Letters from William Hebert, Managing Director, Financial Information Forum, to Robert W. Errett, Deputy Secretary, Commission, dated December 21, 2016; and Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, to Brent J. Fields, Secretary, Commission, dated December 21, 2016. See also Securities Exchange Act Release No. 79424 (November 29, 2016), 81 FR 87603 (December 5, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2016-042).

¹⁶ See FIF Letter.

¹⁷ See Citadel Letter.

¹⁸ 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).

¹⁹ 15 U.S.C. 78o-3(b)(6).

²⁰ 15 U.S.C. 78o-3(b)(9).

²¹ See Approval Order, *supra* note 3.

²² *Id.*

²³ 17 CFR 242.608(c).

isolate the impact of the Pilot so that more precise and robust analysis can be performed. Similarly, identifying daily the number of active MPIDs should increase the ability of researchers to assess the impact of the Pilot by allowing them to control for changes in the number of OTC Trading Centers in each group that are active in Pilot Securities.²⁵

The Commission also believes that FINRA's proposal to aggregate and publish data from those OTC Trading Centers for which CHX is the DEA should help to mitigate confidentiality concerns. The Commission notes that CHX is DEA to a small number of OTC Trading Centers. Therefore, including these OTC Trading Centers in the broader anonymous data set should mitigate concerns about the disclosure of their identities.

For the reasons noted above, the Commission finds that the proposal is consistent with the requirements of the Act. The proposal clarifies and implements certain data collection requirements set forth in the Plan.

V. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-FINRA-2017-006), be and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-08978 Filed 5-3-17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80554; File No. SR-C2-2017-016]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Rule 6.13

April 28, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 25, 2017, C2 Options Exchange,

²⁵ The Commission also notes that FINRA will publish Appendix B data from OTC Trading Centers 120 days after the month end. This delay in publication should help support FINRA's efforts to mitigate confidentiality concerns.

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Rule 6.13. The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

* * * * *

C2 Options Exchange, Incorporated Rules

* * * * *

Rule 6.13. Complex Order Execution

(a)-(b) No change.

(c) Process for Complex Order RFR Auction. Prior to routing to the COB, eligible complex orders may be subject to an automated request for responses ("RFR") auction process.

(1) For purposes of paragraph (c):

(A) "COA" is the automated complex order RFR auction process.

(B) A "COA-eligible order" means a complex order that, as determined by the Exchange on a class-by-class basis, is eligible for a COA considering the order's [marketability (defined as a number of ticks away from the current market),] size, complex order type and complex order origin types (*i.e.* non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-makers or specialists on an options exchange). Complex orders processed through a COA may be executed without consideration to prices of the same complex orders that might be available on other exchanges.

(2) Initiation of a COA:

(A) The System will send an RFR message to all Participants who have elected to receive RFR messages on receipt of (i) a COA-eligible order *with two or more legs that is better than the same side of the Exchange spread market or (ii) a complex order with three or more legs that meets the class, size, and complex order type parameters of subparagraph (c)(1)(B) and is marketable against the Exchange spread*

market. Complex orders as described in subparagraph (c)(2)(A)(ii) will initiate a COA regardless of the order's routing parameters or handling instructions. Immediate or cancel orders that are not marketable against the derived net market in accordance with subparagraph (c)(2)(B) will be cancelled. The RFR message will identify the component series, the size and side of the market of the COA-eligible order and any contingencies, if applicable.

(B) [Notwithstanding the foregoing, Participants may request on an order-by-order basis that incoming COA-eligible orders not COA (a "do-not-COA" request).] *Notwithstanding subparagraph (c)(2)(A)(i), Trading Permit Holders may request on an order-by-order basis that an incoming COA-eligible order with two legs not COA (a "do-not-COA" request). Notwithstanding subparagraph (c)(2)(A)(ii), the System will reject back to a Trading Permit Holder any complex order described in that subparagraph that includes a do-not-COA request.* An order initially submitted to the Exchange with a do-not-COA request may still COA after it has rested on the COB pursuant to Interpretation and Policy .02.

(3)-(9) No change.

. . . Interpretations and Policies:

.01-.07 No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, 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

Exchange seeks to amend Rule 6.13(c) in order to hardcode the marketability

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

parameter (*i.e.*, the price at which a complex order may initiate a COA); amend Rule 6.13(c)(2) related to when a complex order will initiate a COA to account for risks to Market-Makers associated with the use of the Exchange's Quote Risk Monitoring ("QRM") Mechanism; and amend Rule 6.13(c)(2) to make conforming changes to the "do-not-COA" functionality. The Exchange notes that other than the fact the proposed rule text does not reference manual order handling or the Public Automated Routing ("PAR") workstation (because C2 is entirely electronic) all of the proposed rule changes are based on and identical to CBOE Rule 6.53C(d)(i)-(ii).

Marketability

Currently, the marketability parameter in Rule 6.13(c)(1)(B) defined as a number of ticks away from the current market, sets the price at which a complex order will initiate a COA. The Exchange proposes to remove the marketability parameter from the definition of "COA-eligible order," which will remove the Exchange's flexibility to set the price at which a complex order will initiate a COA. The Exchange does not foresee any issues with removing the flexibility to determine the price at which a COA will be initiated because the Exchange does not foresee a future need to modify the price at which auctions are initiated. If unforeseen circumstances arise where the Exchange believes it is necessary to modify the price at which auctions are initiated then the Exchange will submit a subsequent rule filing. Additionally, removing such flexibility may provide increased certainty to market participants about the price at which a complex order will initiate a COA, helping to remove impediments to and perfect the mechanism of a free and open market.

The Exchange proposes to hardcode the price at which a complex order may initiate a COA in Proposed Rule 6.13(c)(2)(A). For example, assuming all of the non-price specific requirements are met, a complex order with two or more legs under proposed subparagraph (c)(2)(A)(i) will initiate a COA if the Exchange spread market⁵ is 1–1.20 and the complex order is to buy at \$1.01 or higher or to sell at 1.19 or lower.⁶

⁵ The term "Exchange spread market" means the derived net market based on the BBOs in the individual series legs comprising a complex order and, if a stock-option order, the NBBO of the stock leg. See Rule 1.1.

⁶ The Exchange notes that the prices at which a complex order will initiate a COA under subparagraph (c)(2)(A)(i) is consistent with the current settings for the marketability parameter.

Additionally, assuming the non-price specific requirements are met, a complex order with three legs under subparagraph (c)(2)(A)(ii) will initiate a COA if the Exchange Spread Market is 1–1.20 and the complex order is to buy at \$1.20 or higher or to sell at \$1.00 or lower. Initiating a COA in these situations will relieve the risk to Market-Makers noted below, which helps promote just and equitable principles of trade by relieving risk to Market-Makers allowing them to more efficiently and effectively provide important liquidity.

QRM

Under Rule 8.12, C2 offers Market-Makers that are obligated to provide and maintain continuous electronic quotes in an option class the QRM Mechanism, which is functionality to help Market-Makers manage their quotes and related risk. Market-Makers with appointments on the System⁷ must, among other things, provide and maintain continuous electronic quotes in a specified percentage of series in each class for a specified percentage of time.⁸ To comply with this requirement, each Market-Maker may use its own proprietary quotation and risk management system to determine the prices and sizes at which it quotes. In addition, each Market-Maker may use QRM.⁹

A Market-Maker's risk in a class is not limited to the risk in a single series of that class. Rather, a Market-Maker is generally actively quoting in multiple classes, and each class may comprise hundreds or thousands of individual series. The System automatically executes orders against a Market-Maker's quotes in accordance with the Exchange's priority and allocation rules.¹⁰ As a result, a Market-Maker has exposure and risk in all series in which it is quoting in each of its appointed classes. QRM is an optional functionality that helps Market-Makers, and Participant organizations with

This portion of the proposal simply hardcodes existing settings.

⁷ The term "System" means the automated trading system used by the Exchange for the trading of options contracts. See Rule 1.1.

⁸ See *e.g.*, Rules 8.5, 8.13, and 8.17.

⁹ Although Market-Makers or Participant organizations must establish parameters for an acronym or firm, as applicable, for each QRM function set forth in Rule 8.12, a Market-Maker or Participant organization could set the value for the total number of contracts executed in a class at a level exceeding the total number of contracts it actually quotes in the class, which allows Market-Makers or Participant organization who prefer to use their own risk-management systems to enter values that assure the Exchange parameters will not be triggered.

¹⁰ See Rules 6.12 and 6.13.

which a Market-Maker is associated, limit this overall exposure and risk.

Specifically, if a Market-Maker elects to use QRM, the System will cancel a Market-Maker's quotes in all series in an appointed class if certain parameters the Market-Maker establishes are triggered. Market-Makers may set the following QRM parameters (Market-Makers may set none, some or all of these parameters):

- A maximum number of contracts for that class (the "contract limit") and a specified rolling time period in seconds within which such contract limit is to be measured (the "measurement interval");
- a maximum cumulative percentage (which is the sum of the percentages of the original quoted size of each side of each series that trade) (the "cumulative percentage limit") that the Market-Maker is willing to trade within a specified measurement interval; or
- a maximum number of series for which either side of the quote is fully traded (the "number of series fully traded") within a specified measurement interval.

If the Exchange determines the Market-Maker has traded more than the contract limit or cumulative percentage limit, or has traded at least the number of series fully traded, of a class during the specified measurement interval, the System will cancel all of the Market-Maker's electronic quotes in that class (and any other cases with the same underlying security) until the Market-Maker refreshes those quotes (a "QRM Incident"). A Market-Maker, or Participant organization with which the Market-Maker is associated, may also specify a maximum number of QRM Incidents that may occur on an Exchange-wide basis during a specified measurement interval. If the Exchange determines that a Market-Maker or Participant Organization, as applicable, has reached its QRM Incident limit during the specified measurement interval, the System will cancel all of the Market-Maker's or Participant Organization's quotes, as applicable, and the Market-Maker's orders resting in the book in all classes and prevent the Market-Maker and Participant organization from sending additional quotes or orders to the Exchange until the earlier to occur of (1) the Market-Maker or Participant organization reactivates this ability or (2) the next trading day.

The purpose of the QRM functionality is to allow Market-Makers to provide liquidity across most series in their appointed classes without being at risk of executing the full cumulative size of all their quotes before being given

adequate opportunity to adjust their quotes. For example, if a Market-Maker can enter quotes with a size of 25 contracts in 100 series of class ABC, its potential exposure is 2,500 contracts in ABC. To mitigate the risk of having all 2,500 contracts in ABC execute without the opportunity to evaluate its positions, the Market-Maker may elect to use QRM. If the Market-Maker elects to use the contract limit functionality and sets the contract limit at 100 and the measurement interval at five seconds for ABC, the System will automatically cancel the Market-Maker's quotes in all series of ABC if 100 or more contracts in series of ABC execute during any five-second period.

To assure that all quotations are firm for their full size, the System performs the parameter calculations after an execution against a Market-Maker's quote occurs. For example, using the same parameters in class ABC as above, if a Market-Maker has executed a total of 95 contracts in ABC within the previous three seconds, a quote in a series of ABC with a size of 25 contracts continues to be firm for all 25 contracts. An incoming order in that series could execute all 25 contracts of that quote, and, following the execution, the total size parameter would add 25 contracts to the previous total of 95 for a total of 120 contracts executed in ABC. Because the total size executed within the previous five seconds now exceeds the 100 contract limit for ABC, the System would, following the execution, immediately cancel all of the Market-Maker's quotes in series of ABC. The Market-Maker would then enter new quotes for series in ABC. Thus, QRM limits the amount by which a Market-Maker's executions in a class may exceed its contract limit to the largest size of its quote in a single series of the class (or 25 in this example).

The Exchange proposes to amend Rule 6.13 regarding complex orders to limit a potential source of unintended Market-Maker risk related to how the System calculates risk parameters under Rule 8.12 when complex orders leg into the market.¹¹ As discussed above, by

¹¹ Rule 6.13(b)(1)(A) provides that complex orders in the complex order book ("COB") may execute against individual orders or quotes in the book provided the complex order can be executed in full (or a permissible ratio) by the orders and quotes in the book. Rule 6.13(c)(5)(A) provides that orders that are eligible for the complex order auction ("COA") may trade with individual orders and quotes in the book provided the COA-eligible order can be executed in full (or a permissible ratio) by the orders and quotes in the book. COA is an automated request for responses ("RFR") auction process. Upon initiation of a COA, the Exchange sends an RFR message to all Trading Permit Holders who have elected to receive RFR messages, which RFR message identifies the series, size and side of

checking the risk parameters following each execution in a series, the risk parameters allow a Market-Maker to provide liquidity across multiple series of a class without being at risk of executing the full cumulative size of all its quotes. This is not the case, however, when a complex order legs into the regular market (*i.e.*, the market for individual, or simple, orders). Because the execution of each leg of a complex order is contingent on the execution of the other legs, the execution of all the legs in the regular market is processed as a single transaction, not as a series of individual transactions.

For example, if market participants enter into the System individual orders to buy 25 contracts for the Jan 30 call, Jan 35 call, Jan 40 call and Jan 45 call in class ABC, the System processes each order as it is received and calculates the Market-Makers parameters in class ABC following the execution of each 25-contract call. However, if a market participant enters into the System a complex order to buy all four of these strikes in class ABC 25 times, which complex order executes against bids and offers for the individual series (*i.e.*, legs into the market), the System will calculate the Market-Maker's parameters in class ABC following the execution of all 100 contracts. If the Market-Maker had set the same parameters in class ABC as discussed above (100-contract limit with five-second measurement interval) and had executed 95 contracts in class ABC within the previous three seconds, the amount by which the next transaction might exceed 100 is limited to the largest size of its quote in a single series of the class. In that example, since the largest size of the Market-Maker's quotes in any series was 25 contracts, the Market-Maker could not have exceeded the 100-contract limit by more than 20 contracts ($95 + 25 = 120$). However, with respect to the complex order with four legs 25 times, the next transaction against the Market-Maker's quotes potentially could be as large as 100 contracts (depending upon whether there are other market participants at the same price), creating the potential in this example for the Market-Maker to exceed the 100-contract limit by 95 contracts ($95 + 100 = 195$) instead of 20 contracts.

As this example demonstrates, legging of complex orders into the regular market presents higher risk to Market-

the market of the COA-eligible order and any contingencies. Eligible market participants may submit responses during a response time interval. At the conclusion of the response time interval, COA-eligible orders are allocated in accordance with Rule 6.13(c)(5), including against individual orders and quotes in the book.

Makers than executing their quotes against individual orders entered in multiple series of a class in the regular market, because it may result in Market-Makers exceeding their risk parameters by a greater number of contracts. This risk is directly proportional to the number of legs associated with a complex order. Market-Makers have expressed concerns to the Exchange regarding this risk.

As noted above, it is the legging of complex orders into the regular market that presents the potential risk to Market-Makers. Generally, a complex order has the potential to leg into the market when the complex order is marketable against leg quotes. For example, if the Exchange spread market of a complex order strategy is 1.00–1.20 and a complex order to buy or sell at \$1.10 is entered, the complex order would not execute against the legs of the regular market because the leg markets (which make-up the Exchange spread market) cannot satisfy the order. A complex order to buy at \$1.20 or higher or to sell at \$1.00 or lower (*i.e.*, an order that is marketable against the Exchange spread market) would potentially be executable against the leg quotes.

To address this Market-Maker risk, the Exchange proposes to add subparagraph (2)(A)(ii) to Rule 6.13(c) to require certain orders with three or more legs to COA prior to entering the COB. But first, for clarity sake, the Exchange proposes to add subparagraph (2)(A)(i) to Rule 6.13(c) to provide that the System will initiate a COA upon receipt of a COA-eligible order (*i.e.*, an order that meets the class, size, complex order type and complex order origin types parameters)¹² with two or more legs that is better than the same side of the Exchange spread market. The Exchange notes that subparagraph (2)(A)(i) is not a substantive change. Subparagraph (2)(A)(i) simply reorganizes the currently effective rule. Whereas today Rule 6.13(c)(2) states that the System will initiate a COA on receipt of a COA-eligible order, which currently means an order with two or more legs that meets the class, marketability, size, order type, and origin type parameters, proposed subparagraph (2)(A)(i) states that the System will initiate a COA on receipt of a COA-eligible order (which as proposed in subparagraph (c)(1)(B) will continue to include the class, size, order type, and origin type parameters but will no longer include the marketability parameter as it will be hardcoded into subparagraph (c)(A)(i)) with two or more

¹² See Rule 6.13(c)(1)(B).

legs¹³ that is better than the same side of the Exchange spread market (which is the current setting for marketability). As noted, the purpose of subparagraph (2)(A)(i) is to provide clarity as it relates to additional subparagraph (2)(A)(ii), and the Exchange believes reorganizing current functionality into paragraph (2)(A)(i) will help bring clarity to subparagraph (2)(A)(ii).

Now, with regards to subparagraph (2)(A)(ii), the Exchange proposes to provide that the System will initiate a COA upon receipt of a complex order with three or more legs that meets the class, size, and complex order type parameters of subparagraph (c)(1)(B) and is marketable against the Exchange spread market. The purpose of proposed subparagraph (2)(A)(ii) of Rule 6.13(c) is simply to allow certain orders with three legs that will not COA under subparagraph (c)(2)(A)(i) to COA pursuant to subparagraph (c)(2)(A)(ii). In short, if an order with three or more legs does not COA pursuant to Rule 6.13(c)(2)(A)(i)—because it is not COA-eligible—it may still COA pursuant to Rule 6.13(c)(2)(A)(ii), as long as the order meets the class, size, complex order type parameters of subparagraph (c)(1)(B) and is marketable against the Exchange Spread market.

For example, complex orders identified as IOC are not currently COA-eligible under the current rule (and the Exchange has no plans at this time to make them COA-eligible pursuant to proposed subparagraph (2)(A)(i)). However, IOC orders that have a large number of legs that execute immediately against prices in the leg markets are an example of orders that cause the risk to Market-Makers described above. Also, such orders do not appear to have investment strategies similar to traditional complex orders but instead are specifically designed to circumvent QRM settings. Thus, proposed subparagraph (2)(A)(ii) will allow the Exchange to initiate a COA upon receipt of orders with three or more legs that meet the class, size, order type parameter (including IOCs) that are marketable against the Exchange spread market.

The proposed rule change will only impact a small percentage of complex orders that enter into the System, as a large percentage of complex orders entered into the System are only two legs. The Exchange also notes that

complex orders with three or more legs will still have opportunities for execution through COA or on the COB if they do not execute at the end of the COA (including execution with the leg markets). Thus, the Exchange believes that requiring complex orders with three or more legs to COA prior to entering COB and legging into the regular market does not create any unusual circumstances for the System. The Exchange believes that the potential risk to Market-Makers in the regular market of allowing orders with three or more legs to directly enter COB and leg into the market far outweighs the potential benefit of continuing to allow COA to be voluntary for a limited number of orders.

The Exchange believes that requiring certain complex orders with three or more legs to COA prior to entering COB and legging into the market will discourage market participants from continuing to enter the complex orders that expose Market-Makers to the risk described above. The proposed rule change eliminates the possibility of immediate executions of those particular complex orders. Market participants may still enter those complex orders. However, if they do, those complex orders will COA, which COA will allow Market-Makers to become aware of those complex orders and have adequate opportunity to react accordingly, including to adjust their quotes to avoid circumvention of their QRM settings. If a Market-Maker receives an RFR for a COA for one of those complex orders in one of its appointed classes, and the Market-Maker believes the order may execute against its quotes and cause executions that significantly exceed its contract limit in that class, the Market-Maker may adjust its quotes as it deems necessary to reduce its risk exposure prior to the complex order legging into the market and being presented to the Market-Maker for execution. The Exchange believes the proposed rule change will allow Market-Makers to better manage their risk in their appointments, as it will reduce the risk of those complex orders causing executions that significantly exceed Market-Makers' risk parameters. The Exchange believes this reduced risk will encourage Market-Makers to quote larger size, which will increase liquidity and enhance competition in those classes.

The Exchange notes that the proposed rule change does not impact the allocation of complex orders or relieve Market-Makers of their obligations to provide continuous electronic quotes under the Exchange Rules or to provide

“firm” quotes pursuant to Rule 8.6 or Rule 602 of Regulation NMS.

Do Not COA

SR-C2-2015-025 provided, among other things, that rather than have Participants affirmatively request that their orders COA, incoming COA-eligible orders would COA by default.¹⁴ Rule 6.13(c)(2) currently provides that Participants may request on an order-by-order basis that a COA-eligible order not COA (referred to as a “do-not-COA” request). The Exchange proposes to make conforming changes to the do-not-COA request to account for the amendment to Rule 6.13(c)(2)(A)(i) and (ii). The Exchange proposes to add Rule 6.13(c)(2)(B) to provide that notwithstanding subparagraph (c)(2)(A)(i), Trading Permit Holders may request on an order-by-order basis that an incoming COA-eligible order with two legs not COA. Proposed Rule 6.13(c)(2)(B) also provides that notwithstanding subparagraph (c)(2)(A)(ii), the System will reject back to a Trading Permit Holder any complex order described in that subparagraph that includes a do-not-COA request. This will allow Participants the ability to request their orders not COA but also ensure that three-legged orders—which may cause the risk to Market-Makers described above—to be rejected. In either case, order entry firms are sophisticated market participants capable of managing their orders as they see fit.

The Exchange will announce the implementation date of the proposed rule change in a Regulatory Circular to be published no later than 90 days following the effective date. The implementation date will be no later than 180 days following the effective date.

2. Statutory Basis

Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged

¹³ Including “two or more legs” in proposed subparagraph (A)(i) is actually superfluous language because the term “COA-eligible order” by definition must be a “complex order,” and a “complex order” by definition must have two or more legs. See Rule 6.13(c)(1)(B). A “complex order” is by definition two or more legs. See Rule 6.13(a)(1).

¹⁴ See Securities Exchange Act Release No. 76621 (December 11, 2015), 80 FR 78793 (December 17, 2015).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change alleviates a potential risk to Market-Makers that arises through the use of QRM. Complex orders with three or more legs that meet the class, size, and order type (including IOCs) parameters of subparagraph (c)(1)(B) and that are marketable against the derived net market (which the Exchange has identified as potentially causing risk to Market-Makers) will initiate a COA, which helps promote just and equitable principles of trade by relieving risk to Market-Makers allowing them to more efficiently and effectively provide important liquidity. Orders that are designated as IOC and meet the class and size parameters of subparagraph (c)(1)(B), but that are not marketable against the derived net market, will be cancelled, which allows order entry firms to use their own sophisticated technology to manage their orders helping to remove impediments to and perfects the mechanism of a free and open market.

The Exchange also believes the proposed rule change to initiate a COA upon receipt of complex orders with three or more legs that meet the class, size, and order type (including IOCs) parameters of subparagraph (c)(1)(B) and that are marketable against the derived net market is consistent with the requirement that Market-Makers' quotes be firm under Rule 602 of Regulation NMS.¹⁸ The proposed rule

change does not relieve Market-Makers of their obligation to provide "firm" quotes. If a complex order with three or more legs goes through COA and then legs into the market for execution upon completion of the COA, at which point the complex order would execute against a Market-Maker's quotes based on priority rules, the Market-Maker must execute its quotes against the order at its then-published bid or offer up to its published quote size, even if such execution would cause the Market-Maker to significantly exceed its risk parameters. However, prior to the end of COA (and thus prior to a complex order legging into the market), a Market-Maker may adjust its published quotes to manage its risk in a class as it deems necessary, including to prevent executions that would exceed its risk parameters. In this case, the firm quote rule does not obligate the Market-Maker to execute its quotes against the complex order at the quote price and size that was published when the order entered the System and initiated the COA. Rather, the Market-Maker's firm quote obligation applies only to its disseminated quote at the time an order is presented to the Market-Maker for execution, which presentation does not occur until the System processes the order against the leg markets after completion of the COA.¹⁹ Thus, the proposed rule change is consistent with the firm quote rule.

Additionally, the Exchange is removing flexibility with regards to the marketability parameter. Although the Exchange prefers flexibility, the Exchange does not foresee the need to retain flexibility with regards to the marketability parameter and hardcoding the parameter may help avoid confusion with regards to the price at which a

to the Exchange a revised bid or offer. C2 Rule 8.6 imposes a similar obligation (Market-Maker bids and offers are firm for all orders under Rule 8.6 and SEC Rule 602 for the number of contracts specified in the bid or offer).

¹⁹ See *Staff Legal Bulletin No. 16, Transaction in Listed Options Under Exchange Act Rule 11Ac1-1*, U.S. Securities and Exchange Commission, Division of Market Regulation, January 20, 2004 ("Scenario 3: When an Order is 'Presented' . . . If an individual market maker generates its own quotations . . . and exchange systems route incoming orders to the responsible broker-dealer with priority, when is an order presented to a responsible broker-dealer? Response: . . . When each market maker is the responsible broker-dealer with respect to its own quote, an order is presented to it when received by the market maker from the exchange system."). When a complex order is processing through COA, the order is still in the System and has not yet been presented to a broker or dealer (including a Market-Maker) for execution. Only after completion of the COA, when the System allocates the complex order for execution in accordance with priority rules, will that order be "presented" to the Market-Maker for firm quote purposes.

complex order will initiate a COA, which also helps to remove impediments to and perfect the mechanism of a free and open market.

Finally, the proposed rule change will allow Participants to use their knowledge and experience to evaluate then-current market conditions and determine if they do not want to COA orders based on those conditions, which also removes impediments to and perfects the mechanism of a free and open market. This allows Participants to, for example, have two-legged orders routed to the COB for potential immediate execution or three-legged orders to be rejected if they do not want to have three-legged orders delayed by COA.

The Exchange notes that other than the fact the proposed rule text does not reference manual order handling or the Public Automated Routing ("PAR") workstation (because C2 is entirely electronic) all of the proposed rule changes are based on and identical to CBOE Rule 6.53C(d)(i)-(ii).

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition because the proposed rule change is intended to reduce risk to Market-Makers that are quoting in the regular market. C2 believes that the proposed rule change will promote competition by encouraging Market-Makers to increase the size of and to more aggressively price their quotes, which will increase liquidity on the Exchange. To the extent that the rule change makes C2 a more attractive marketplace, market participants are free to become Trading Permit Holders on C2 and other exchanges are free to amend their rules in a similar manner. Furthermore, the Exchange also does not believe that the hardcoding of the price at which a complex order may initiate a COA instead of the Exchange having the flexibility to modify the price parameter will impose a burden on competition as the hardcoded parameter will apply equally to all participants. Finally, the Exchange does not believe allowing Participants to determine not to have their orders COA will impose a burden on competition as it will also apply equally to all participants and allow Participants to use their knowledge and experience executing orders to determine whether they want an order to COA. The Exchange notes

¹⁷ *Id.*

¹⁸ Rule 602(b)(2) obligates a Market-Maker to execute any order to buy or sell a subject security presented to it by another broker or dealer or any other person belonging to a category of persons with whom the Market-Maker customarily deals, at a price at least as favorable to the buyer or sell as the Market-Maker's published bid or offer in any amount up to its published quotation size. Rule 602(b)(3) provides that no Market-Maker is obligated to execute a transaction for any subject security to purchase or sell that subject security in an amount greater than its revised quotation size if, prior to the presentation of an order for the purchase or sale of a subject security, the Market-Maker communicated to the Exchange a revised quotation size. Similarly, no Market-Maker is obligated to execute a transaction for any subject security if, before the order sought to be executed is presented, the Market-Maker has communicated

that other than the fact the proposed rule text does not reference manual ordering or the Public Automated Routing (“PAR”) workstation (because C2 is entirely electronic) all of the proposed rule changes are based on and identical to CBOE Rule 6.53C(d)(i)–(ii).

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b–4(f)(6) thereunder.²¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–C2–2017–016 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–C2–2017–016. 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–C2–2017–016 and should be submitted on or before May 25, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017–08981 Filed 5–3–17; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9984]

Notice of Information Collection Under OMB Emergency Review: Supplemental Questions for Visa Applicants

ACTION: Notice of request for emergency OMB approval and public comment.

SUMMARY: The Department of State has submitted the information collection

request described below to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The purpose of this notice is to allow for public comment from all interested individuals and organizations.

Emergency review and approval of this collection has been requested from OMB by May 18. *If granted, the emergency approval is only valid for 180 days.*

ADDRESSES: Direct any comments on this emergency request to both the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB) and to Bureau of Consular Affairs, Visa Office.

All public comments must be received by May 18.

You may submit comments to OMB by the following methods:

- **Email:** oira_submission@omb.eop.gov. You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.

- **Fax:** 202–395–5806. Attention: Desk Officer for Department of State.

You may submit comments to Bureau of Consular Affairs, Visa Office by the following methods:

- You may submit comments to Bureau of Consular Affairs, Visa Office by the following methods:

- **Web:** Persons with access to the Internet may comment on this notice by going to www.Regulations.gov. You can search for the document by entering “Docket Number: DOS–2017–0019” in the Search field. Then click the “Comment Now” button and complete the comment form.

- **Email:** PRA_BurdenComments@state.gov. You must include *Emergency Submission Comment on “Supplemental Questions for Visa Applicants”* in the subject line of your message.

You must include the DS form number (if applicable) information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents to PRA_BurdenComments@state.gov.

SUPPLEMENTARY INFORMATION:

- **Title of Information Collection:** Supplemental Questions for Visa Applicants.

- **OMB Control Number:** New.
- **Type of Request:** Emergency Review.

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

²² 17 CFR 200.30–3(a)(12).

- *Originating Office:* Bureau of Consular Affairs, Visa Office (CA/VO).
- *Form Number:* DS-5535.
- *Respondents:* Immigrant and nonimmigrant visa applicants who have been determined to warrant additional scrutiny in connection with terrorism or other national security-related visa ineligibilities.

- *Estimated Number of Respondents:* 65,000 respondents.

- *Estimated Number of Responses:* 65,000 responses.

- *Average Time per Response:* 60 minutes.

- *Total Estimated Burden Time:* 65,000 annual hours.

- *Frequency:* Once per respondent's application.

- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

- Evaluate the accuracy of our estimate of the time and cost burden of this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public records. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Department proposes requesting the following information, if not already included in an application, from a subset of visa applicants worldwide, in order to more rigorously evaluate applicants for terrorism or other national security-related visa ineligibilities:

- Travel history during the last fifteen years, including source of funding for travel;

- Address history during the last fifteen years;

- Employment history during the last fifteen years;

- All passport numbers and country of issuance held by the applicant;

- Names and dates of birth for all siblings;

- Name and dates of birth for all children;

- Names and dates of birth for all current and former spouses, or civil or domestic partners;

- Social media platforms and identifiers, also known as handles, used during the last five years; and

- Phone numbers and email addresses used during the last five years.

Most of this information is already collected on visa applications but for a shorter time period, e.g. five years rather than fifteen years. Requests for names and dates of birth of siblings and, for some applicants, children are new. The request for social media identifiers and associated platforms is new for the Department of State, although it is already collected on a voluntary basis by the Department of Homeland Security (DHS) for certain individuals. Regarding travel history, applicants may be requested to provide details of their international or domestic (within their country of nationality) travel, if it appears to the consular officer that the applicant has been in an area while the area was under the operational control of a terrorist organization as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(3)(B)(vi). Applicants may be asked to recount or explain the details of their travel, and when possible, provide supporting documentation.

This information collection implements the directive of the President, in the *Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security* of March 6, 2017, to implement additional protocols and procedures focused on “ensur[ing] the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility or deportability, or grounds for the denial of other immigration benefits.” Consular posts worldwide regularly engage with law enforcement and intelligence community partners to identify sets of post applicant populations warranting increased scrutiny. The additional information collected will facilitate consular officer efforts to immediately apply more rigorous evaluation of these applicants for potential visa ineligibilities. In accordance with existing authorities, visas may not be denied on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation.

The estimated number of respondents represents the estimate of relevant State Department officials that 0.5% of U.S. visa applicants worldwide, or in the range of 65,000 individuals per annum, will present a threat profile, based on

individual circumstances and information they provide, that will lead U.S. consular officers at posts around the world to conclude the applicant warrants enhanced screening that takes into account the information that is proposed to be collected. The estimate will be updated in the next request to continue collecting the information based on experience reported by overseas posts. Failure to provide requested information will not necessarily result in visa denial, if the consular officer determines the applicant has provided a credible explanation why he or she cannot answer a question or provide requested supporting documentation, such that the consular officer is able to conclude that the applicant has provided adequate information to determine the applicant's eligibility to receive the visa. The collection of social media platforms and identifiers will not be used to deny visas based on applicants' race, religion, ethnicity, national origin, political views, gender, or sexual orientation.

Methodology

Department of State consular officers at visa-adjudicating posts worldwide will ask the proposed additional questions to resolve an applicant's identity or to vet for terrorism or other national security related visa ineligibilities when the consular officer determines that the circumstances of a visa applicant, a review of a visa application, or responses in a visa interview indicate a need for greater scrutiny. The additional questions may be sent electronically to the applicant or be presented orally or in writing at the time of the interview. Consular officers will not request user passwords and will not attempt to subvert any privacy controls the applicants may have implemented on social media platforms. Consular officers are directed not to engage or interact with individuals on or through social media; not to violate or attempt to violate individual privacy settings; and not to use social media or assess an individual's social media presence beyond established Department guidance.

David T. Donahue,

Acting Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2017-08975 Filed 5-3-17; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF STATE

[Public Notice 9981]

60-Day Notice of Proposed Information Collection: Refugee Biographic Data**ACTION:** Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *July 3, 2017*.

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

- *Web:* Persons with access to the Internet may comment on this notice by going to www.Regulations.gov. You can search for the document by entering "Docket Number: DOS-2017-0018" in the Search field. Then click the "Comment Now" button and complete the comment form.

- *Email:* PRM-Comments@state.gov.
- *Regular Mail:* Send written comments to: Delicia Spruell, PRM/Admissions, 2025 E Street NW., SA-9, 8th Floor, Washington, DC 20522-0908.
- *Fax:* (202) 453-9393.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for supporting documents, to Delicia Spruell, PRM/Admissions, 2025 E Street NW., SA-9, 8th Floor, Washington, DC 20522-0908.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Refugee Biographic Data.
- *OMB Control Number:* 1405-0102.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Population, Refugees, and Migration, Office of Admissions, PRM/A.
- *Form Number:* None.
- *Respondents:* Refugee applicants for the U.S. Refugee Admissions Program.
- *Estimated Number of Respondents:* 50,000.
- *Estimated Number of Responses:* 50,000.

- *Average Time per Response:* 30 Minutes.

- *Total Estimated Burden Time:* 25,000 hours.

- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Refugee Biographic Data Sheet describes a refugee applicant's personal characteristics and is needed to match the refugee with a sponsoring voluntary agency for initial reception and placement in the U.S. under the United States Refugee Admissions Program administered by the Bureau of Population, Refugees, and Migration, as cited in the Immigration and Nationality Act and the Refugee Act of 1980.

Methodology

Biographic information is collected in a face-to-face intake process with the applicant overseas. An employee of a Resettlement Support Center, under cooperative agreement with PRM, collects the information and enters it into the Worldwide Refugee Admissions Processing System.

Lawrence Bartlett,

Director, Office of Admissions, Bureau of Population, Refugees, and Migration, Department of State.

[FR Doc. 2017-08994 Filed 5-3-17; 8:45 am]

BILLING CODE 4710-33-P**SURFACE TRANSPORTATION BOARD**

[Docket No. AB 1242]

Hartwell First United Methodist Church—Adverse Abandonment and Discontinuance—Hartwell Railroad Company and the Great Walton Railroad Company, Inc., in Hart County, GA

On April 14, 2017, Hartwell First United Methodist Church (Hartwell First or Applicant) filed an application under 49 U.S.C. 10903 requesting that the Surface Transportation Board (Board) authorize the third-party, or adverse, abandonment and discontinuance of approximately 0.25 miles of rail line and associated right-of-way (the Line) owned by The Great Walton Railroad Company (GWRC). The Line, which traverses United States Postal Service Zip Code 30643, extends from Athens Street to a stub end at South Forest Avenue in Hartwell, Hart County, Ga. It is a portion of a line of railroad, which Hartwell First refers to as the Hartwell Line, between Bowersville, Ga., and Hartwell.¹ There are no stations associated with the Line. The application is available on the Board's Web site at <http://www.stb.gov>, or a copy can be secured from Hartwell First's counsel, whose name and address appear below.

Hartwell First currently owns property on both sides of the Line that it wishes to develop. According to Hartwell First, the Line has not been used to provide local rail service since 1996, is largely overgrown, and public crossings have been removed and/or closed by the Georgia Department of Transportation. Hartwell First states that GWRC has entered into a 99-year lease for the Line and adjacent property with a local non-profit for development of a park, walking path, and farmers' market. Thus, Hartwell First asserts that the Line cannot currently be used to conduct rail service even if GWRC wanted to do so. Hartwell First states that GWRC has refused to seek abandonment or discontinuance authority voluntarily. Accordingly, Hartwell First seeks adverse abandonment and discontinuance

¹ In earlier filings, Hartwell First stated that the Line is owned by Hartwell Railroad Company (HRC) and that GWRC has trackage rights over it. (See, e.g., Hartwell First Pet. for Waiver 1, May 26, 2016.) In its application, however, Hartwell First states that, based on additional research, it does not appear that HRC has any ownership or operating rights with respect to the Line. Hartwell First also contends that no carrier (including GWRC and HRC) has Board authorization to own or operate the Hartwell Line. In this notice, references to GWRC should be read to include HRC to the extent appropriate.

authority, so that it can then seek to quiet title to the Line to the extent it bisects Hartwell First's property between Athens Street and Webb Street.

In a decision served in this proceeding on August 29, 2016 (August 2016 Decision), Hartwell First was granted exemptions from several statutory provisions as well as waivers of certain Board regulations at 49 CFR pt. 1152 that were not relevant to its adverse abandonment application or that sought information not available to it. Specifically, Hartwell First was granted an exemption from 49 U.S.C. 10903(c) and waiver of 49 CFR 1152.22(a)(5) pertaining to System Diagram Maps; waivers of certain requirements pertaining to the notice of intent prescribed at 49 CFR 1152.21; waiver of 49 CFR 1152.20(a)(1) to the extent it requires service of the notice on the Board by certified letter rather than electronic or other delivery after a proceeding has been instituted; waiver of 49 CFR 1152.20(a)(2)(x) that notice be served on Amtrak; exemption from 49 U.S.C. 10903(a)(3)(B) concerning posting the notice of intent at agency stations or terminals; waiver of 49 CFR 1152.22(b)–(e), which require that discontinuance and abandonment applications include information regarding the condition of properties, service performed, attributable revenue and cost data, and rural and community impact; waiver of 49 CFR 1152.22(i) concerning the wording of the draft **Federal Register** notice; exemption from 49 U.S.C. 10904 and waiver of 49 CFR 1152.27, which govern an offer of financial assistance (OFA) to continue common carrier rail service; exemption from the public use provisions of 49 U.S.C. 10905 and waiver of the corresponding regulation at 49 CFR 1152.28; and waiver of the requirement under 49 CFR 1152.29(e)(2) that the abandonment be consummated within one year after the abandonment application.

In the August 2016 Decision, Hartwell First was directed to amend certain language in its notice of intent; serve copies of the notice on any significant shippers identified by HRC and/or GWRC; serve copies of the notice on any duly certified labor organizations identified by HRC and/or GWRC as representing their employees; and serve a copy of the notice on the U.S. Railroad Retirement Board. Hartwell First has complied with these requirements.

Hartwell First states that the Line does not contain federally granted rights-of-way. Any documentation in Hartwell First's possession will be made available promptly to those requesting it. Hartwell First's entire case-in-chief

for adverse abandonment and discontinuance was filed with the application.

The interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed adverse abandonment and discontinuance or protests (including protestant's entire opposition case) by May 29, 2017. Persons who may oppose the proposed adverse abandonment and discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed adverse abandonment and discontinuance who wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements of 49 CFR 1152.25. Hartwell First's reply is due by June 13, 2017.

Any request for an interim trail use/railbanking condition under 16 U.S.C. 1247(d) and 49 CFR 1152.29 must be filed by May 29, 2017, and should address whether the issuance of a certificate of interim trail use in this case would be consistent with the grant of an adverse abandonment and discontinuance application. Each trail use request must be accompanied by a \$300 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 1242 and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; (2) Eric M. Hocky, Esq., Clark Hill PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103, (215) 640–8500.

Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's "www.stb.gov" Web site, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR pt. 1152, every document filed with the Board must be served on all parties to this adverse abandonment and discontinuance proceeding. 49 CFR 1104.12(a).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's

Office of Environmental Analysis (OEA) will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact OEA by phone at the number listed below. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment/discontinuance regulations at 49 CFR pt. 1152. Questions concerning environmental issues may be directed to OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Board decisions and notices are available on our Web site at "WWW.STB.GOV."

Decided: May 1, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2017–09135 Filed 5–3–17; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0383]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 9 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The renewed exemptions were effective on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before June 5, 2017.

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 W64–224, Washington, DC 20590–0001. Office hours are from 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.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0123; FMCSA–2013–0124 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal Holidays.

- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time 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., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

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 <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for two years 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 two-year period.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to driver a CMV if that person:

First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

49 CFR 391.41(b)(11) was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The 9 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in 49 CFR 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the twelve applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement (80 FR 57032; 80 FR 60747). In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce.

The 9 drivers in this notice remain in good standing with the Agency and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. FMCSA has concluded that renewing the exemptions for each of these applicants is likely to achieve a level of safety equal to that existing without the exemption. Therefore, FMCSA has decided to renew each exemption for a two-year period. In accordance with 49 U.S.C. 31136(e) and 31315, each driver has received a renewed exemption.

As of May 8, 2017, the following 9 drivers have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in 49 CFR 391.41(b)(11), from driving CMVs in interstate commerce (80 FR 18697).

Herbert Crowe (MO)
Kelly Gene Eller (NC)
Jason R. Gensler (OH)
Thomas Lipyanic Jr. (PA)
Donald B. Malley (MO)
Kathy A. Meadows (GA)
David W. Shores (NC)
Richard E. Whittaker (IN)
Brian Whittington (MI)

The drivers were included in FMCSA–2014–0383. The exemptions were effective on May 8, 2017, and will expire on May 8, 2019.

IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in 49 CFR 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR 391 to FMCSA. In addition, the driver must

also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded 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(e) and 31315.

IV. Conclusion

Based upon its evaluation of the nine exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in 49 CFR 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: April 27, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017-09003 Filed 5-3-17; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0116]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from two individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against operation of a commercial motor vehicle (CMV) by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure. If granted, the exemptions would enable these individuals with implantable

cardioverter defibrillators (ICDs) to operate CMVs in interstate commerce.

DATES: Comments must be received on or before June 5, 2017.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2017-0116 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov>, at any time 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., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

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 <http://www.regulations.gov>, as described in the system records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

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-

224, Washington, DC 20590-0001. Office hours are from 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. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a two-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 two-year period.

The two individuals listed in this notice have requested an exemption from 49 CFR 391.41(b)(4). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard found in 49 CFR 391.41(b)(4) states that a person is physically qualified to drive a CMV if that person:

Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section D. *Cardiovascular: § 391.41(b)(4)*, paragraph 4.] The advisory criteria states that ICDs are disqualifying due to risk of syncope.

II. Qualifications of Applicants

Justin Daale

Mr. Daale is a 40 year old Class A CDL holder in Iowa. An October 2016 cardiologist report indicates that Mr. Daale's ICD was implanted in July 2016. No complications or instability of an underlying heart condition are described in the medical documents dated October 7, 2016, July 19, 2016,

¹ See http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171.a and <https://www.gpo.gov/jdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

July 25, 2016, and August 15, 2016 received with his application request.

Raymond Loffredo

Mr. Loffredo is a 71 year old Class A CDL holder in Pennsylvania. A January 2017 report from the office of Mr. Loffredo's cardiologist indicates that his ICD was implanted in May of 2016 and has never deployed. As of a November 2016 office evaluation he was "clinically stable on his current medical regimen, has no cardiac complaints, and his underlying medical condition is under control."

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number "FMCSA-2017-0116" and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and in the search box insert the docket number

FMCSA-2017-0116 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to this notice.

Issued on: April 27, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017-08999 Filed 5-3-17; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0017]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 36 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. 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. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before June 5, 2017. All comments will be investigated by FMCSA. The exemptions will be issued the day after the comment period closes.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2017-0017 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1-202-493-2251.

Instructions: Each submission must include the Agency name and the

docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time 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., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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.

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. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations 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." FMCSA can renew exemptions at the end of each 2-year period. The 36 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an

exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

David A. Buchanan

Mr. Buchanan, 46, has chorioretinal scarring in his left eye due to a traumatic incident in 2013. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2016, his optometrist stated, "Also, Mr. Buchanan's overall vision with both eyes is normal 20/20. I think he should be able to perform the driving tests required for his commercial vehicle." Mr. Buchanan reported that he has driven straight trucks for 6 years, accumulating 90,000 miles, and tractor-trailer combinations for 15 years, accumulating 300,000 miles. He holds a Class A CDL from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brian E. Burrows

Mr. Burrows, 45, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/125. Following an examination in 2016, his optometrist stated, "In my medical opinion, this patient has sufficient vision to safely perform tasks required to operate a commercial vehicle." Mr. Burrows reported that he has driven straight trucks for 20 years, accumulating 840,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Esta Cadet

Mr. Cadet, 41, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/25. Following an examination in 2016, his optometrist stated, "Therefore, both his visual acuity and color vision meet the standards to qualify him to operate a commercial vehicle under the DOT regulation provided." Mr. Cadet reported that he has driven straight trucks for 3 years, accumulating 34,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary G. Colby

Mr. Colby, 53, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2016, his optometrist stated, "Gary

has no peripheral vision defects and is capable of operating a commercial vehicle in all conditions." Mr. Colby reported that he has driven straight trucks for 8 years, accumulating 400,000 miles, and tractor-trailer combinations for 8 years, accumulating 400,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Herman A. Davis

Mr. Davis, 43, has exotropia and scarring in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "In my medical opinion, Mr. Davis DOES [*sic*] have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Davis reported that he has driven straight trucks for 20 years, accumulating 108,000 miles, and tractor-trailer combinations for 5 years, accumulating 5,000 miles. He holds a Class A CDL from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brandon G. Dills

Mr. Dills, 33, has had a prosthetic left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2016, his optometrist stated, "He demonstrates sufficient vision abilities to pass a commercial driving license exam." Mr. Dills reported that he has driven straight trucks for 10 years, accumulating 250,000 miles, and buses for 10 years, accumulating 20,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeremy L. Fricke

Mr. Fricke, 34, has complete loss of vision in his right eye due to a traumatic incident in 2002. The visual acuity in his right eye is no light perception, and in his left eye, 20/15. Following an examination in 2016, his optometrist stated, "His vision in the left eye is excellent uncorrected and, in my opinion, is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. Fricke reported that he has driven straight trucks for 8 years, accumulating 32,000 miles, and tractor-trailer combinations for 12 years, accumulating 48,000 miles. He holds an operator's license from

North Dakota. His driving record for the last 3 years shows no crashes and 2 convictions for moving violations in a CMV; in the first incident, he exceeded the speed limit by 20 mph, and in the second incident he exceeded the speed limit by 15 mph.

Scott J. Geritano

Mr. Geritano, 55, has had glaucoma in his left eye since 2013. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2016, his optometrist stated, "Therefore, based on the testing above, he does have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Geritano reported that he has driven straight trucks for 12 years, accumulating 300,000 miles, and tractor-trailer combinations for 19 years, accumulating 1.5 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jonathen M. Gilligan

Mr. Gilligan, 29, has had a degenerated globe in his left eye since childhood. The visual acuity in his right eye is 20/30, and in his left eye, light perception. Following an examination in 2016, his optometrist stated, "Jonathan [*sic*] has satisfactorily undertaken and passed the necessary requirements for CDL driving certification. Tests have proven stability and clearly demonstrates sufficient vision to perform the driving tasks required to operate a COMMERCIAL [*sic*] vehicle." Mr. Gilligan reported that he has driven straight trucks for 6 years, accumulating 150,000 miles. He holds a Class AM CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey J. Graham

Mr. Graham, 47, has had a choroidal neovascular membrane in his right eye since 2013. The visual acuity in his right eye is 20/250, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "Therefore, I will certify, in my medical opinion, that Jeffrey has sufficient vision to operate a commercial vehicle." Mr. Graham reported that he has driven tractor-trailer combinations for 29 years, accumulating 2.9 million miles. He holds a Class E CA CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dustin L. Hawkins

Mr. Hawkins, 29, has had coats disease in his right eye since childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "In my medical opinion, Mr. Hawkins has sufficient vision in his left eye to operate a commercial vehicle." Mr. Hawkins reported that he has driven straight trucks for 7 years, accumulating 140,000 miles, and tractor-trailer combinations for 2 years, accumulating 94,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael S. Higham

Mr. Higham, 62, has retinal detachment in his right eye since 2012. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2016, his ophthalmologist stated, "The visual acuity is normal and there are no abnormalities in the left eye . . . There are no deficiencies that would not allow him to operate a commercial vehicle." Mr. Higham reported that he has driven tractor-trailer combinations for 39 years, accumulating 3.32 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Travis R. Honzel

Mr. Honzel, 36, has optic nerve damage in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2016, his optometrist stated, "In my opinion, patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Honzel reported that he has driven straight trucks for 4 years, accumulating 20,000 miles, and tractor-trailer combinations for 4 years, accumulating 40,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows 1 crash and no convictions for moving violations in a CMV.

Lloyd M. Hoover

Mr. Hoover, 50, has had a macular scar in his right eye due to histoplasmosis in childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/15. Following an examination in 2016, his optometrist stated, "Mr. Hoover also has visual fields extending to 120 degrees in the horizontal and in my opinion has sufficient vision to perform the tasks required to operate a commercial

vehicle." Mr. Hoover reported that he has driven straight trucks for 33 years, accumulating 16.5 million miles, and tractor-trailer combinations for 32 years, accumulating 16 million miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Roy W. Houser, II

Mr. Houser, 52, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2016, his optometrist stated, "In my professional opinion, Mr. Houser has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Houser reported that he has driven straight trucks for 36 years, accumulating 540,000 miles, and tractor-trailer combinations for 31 years, accumulating 4.03 million miles. He holds an operator's license from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Maurice R. Jones, Jr.

Mr. Jones, 65, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "Vision is sufficient to operate a commercial vehicle." Mr. Jones reported that he has driven straight trucks for 14 years, accumulating 28,000 miles. He holds an operator's license from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert B. Jordahl

Mr. Jordahl, 66, has had age-related macular degeneration in his left eye since 2006. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2016, his optometrist stated, "I certify, that in my medical opinion this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Jordahl reported that he has driven straight trucks for 45 years, accumulating 225,000 miles and tractor-trailer combinations for 30 years, accumulating 1.8 million miles. He holds a Class A CDL from North Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Damian Klyza

Mr. Klyza, 34, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "It is my professional opinion that he is visually capable of driving a commercial vehicle." Mr. Klyza reported that he has driven straight trucks for 6 years, accumulating 210,000 miles. He holds an operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John J. Lackey

Mr. Lackey, 48, has a prosthetic left eye due to a traumatic incident in 1993. The visual acuity in his right eye is 20/25, and in his left eye, no light perception. Following an examination in 2016, his optometrist stated, "Pt [sic] is observed to have sufficient vision to operate a commercial vehicle." Mr. Lackey reported that he has driven straight trucks for 22 years, accumulating 330,000 miles, and tractor-trailer combinations for 22 years, accumulating 330,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Zachary J. McCluskey

Mr. McCluskey, 21, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2016, his optometrist stated, "Given the chronic status of his visual acuity, patient likely competent to drive commercially but, [sic] patient must be cleared through the DOT." Mr. McCluskey reported that he has driven straight trucks for 3 years, accumulating 16,500 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Adam Merges

Mr. Merges, 53, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2016, his ophthalmologist stated, "He has low vision OS from abmlyolpia [sic] which is a congenital condition and stable for life. He meets all criteria set out by your department to operate a commercial vehicle." Mr. Merges reported that he has driven straight trucks for 26 years, accumulating 702,000 miles, and tractor-trailer combinations for 26 years,

accumulating 26,000 miles. He holds an operator's license from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jimmy L. Metcalf

Mr. Metcalf, 77, has optic nerve damage in his left eye due to a traumatic incident in 1950. The visual acuity in his right eye is 20/25, and in his left eye, 20/150. Following an examination in 2016, his optometrist stated, "There are no issues which would inhibit COMMERCIAL [*sic*] driving abilities based on visual performance of the right eye." Mr. Metcalf reported that he has driven tractor-trailer combinations for 44 years, accumulating 1.76 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John R. Miller

Mr. Miller, 60, has a macular scar in his right eye due to a traumatic incident in 1981. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2016, his ophthalmologist stated, "I feel that Mr. Miller has sufficient vision to operate a commercial vehicle." Mr. Miller reported that he has driven straight trucks for 40 years, accumulating 1 million miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David G. Neff

Mr. Neff, 48, has had optic atrophy in his left eye since 2012. The visual acuity in his right eye is 20/20, and in his left eye, 20/40. Following an examination in 2016, his optometrist stated, "In my medical opinion, David has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Neff reported that he has driven straight trucks for 6 years, accumulating 312,000 miles. He holds an operator's license from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Matthew J. Neuffer

Mr. Neuffer, 33, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "My opinion is that Mr. Neuffer is able to visually perform the duties mentioned in the letter for operating commercial vehicles." Mr. Neuffer

reported that he has driven straight trucks for 5 years, accumulating 600,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Vincent R. Neville

Mr. Neville, 46, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2016, his optometrist stated, "In my medical opinion, Vince has sufficient vision and can safely perform the driving tasks required to operate a commercial motor vehicle." Mr. Neville reported that he has driven straight trucks for 16 years, accumulating 24,000 miles, and tractor-trailer combinations for 11 years, accumulating 11,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Willie L. Nez, Jr.

Mr. Nez, 49, had his right eye enucleated due to a malignancy in 2005. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2016, his ophthalmologist stated, "In my opinion, he has the visual capacity to perform his driving tasks to operate a commercial vehicle." Mr. Nez reported that he has driven straight trucks for 26 years, accumulating 2.6 million miles, and tractor-trailer combinations for 26 years, accumulating 6.5 million miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kevin B. Patterson

Mr. Patterson, 54, has complete loss of vision in his left eye due to malignant melanoma in 1991. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2016, his optometrist stated that Mr. Patterson does have sufficient vision to perform the driving tasks required to operate a CMV. Mr. Patterson reported that he has driven tractor-trailer combinations for 26 years, accumulating 1.69 million miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Stuart W. Penner

Mr. Penner, 66, has complete loss of vision in his right eye due to absolute glaucoma in childhood. The visual

acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "It is my professional opinion that Mr. Penner has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Penner reported that he has driven straight trucks for 50 years, accumulating 750,000 miles, and tractor-trailer combinations for 20 years, accumulating 600,000 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brock E. Peterson

Mr. Peterson, 41, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "It is my medical opinion that Mr. Brock Peterson has sufficient vision with glasses to perform all the driving tasks required to operate a commercial vehicle." Mr. Peterson reported that he has driven straight trucks for 7 years, accumulating 22,400 miles, tractor-trailer combinations for 7 years, accumulating 22,400 miles, and buses for 7 years, accumulating 22,400 miles. He holds an operator's license from North Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Efren J. Soliz

Mr. Soliz, 48, has a prosthetic left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2016, his optometrist stated, "This patient has sufficient visual field to operate a commercial vehicle." Mr. Soliz reported that he has driven straight trucks for 3 years, accumulating 180,000 miles, and tractor-trailer combinations for 27 years, accumulating 2 million miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Anthony J.M. Thornburg

Mr. Thornburg, 38, has central vision loss in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "In my professional opinion, Mr. Thornburg has sufficient vision to operate a commercial motor vehicle safely" Mr.

Thornburg reported that he has driven straight trucks for 5 years, accumulating 225,000 miles. He holds a chauffer's license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Eric J. Wickman

Mr. Wickman, 47, had his right eye enucleated due to a traumatic incident in 1996. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "In summary, given the stable nature of Eric's visual deficiency and stable ocular health of his left eye, I feel that Eric functions well and is fully able to perform all driving tasks without restriction at this time." Mr. Wickman reported that he has driven straight trucks for 22 years, accumulating 3.3 million miles, and tractor-trailer combinations for 22 years, accumulating 3.3 million miles. He holds a Class CA CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Don S. Williams

Mr. Williams, 58, has a prosthetic right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "It is therefore my opinion that Mr. Williams has full field of vision and would not have difficulty driving any type of motor vehicle." Mr. Williams reported that he has driven straight trucks for 12 years, accumulating 480,000 miles, and tractor-trailer combinations for 8 years, accumulating 880,000 miles. He holds an operator's license from Alabama. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 9 mph.

Garfield M. Williams

Mr. Williams, 40, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "It is in my opinion that Mr. Williams does have sufficient vision to perform the driving tasks required to operate a commercial vehicle and will have no difficulty seeing at night." Mr. Williams reported that he has driven tractor-trailer combinations for 7 years, accumulating 297,500 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and one conviction for a moving

violation in a CMV; he failed to obey a traffic control device.

James J. Wyles

Mr. Wyles, 39, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2016, his ophthalmologist stated, "He has sufficient vision to operate a commercial vehicle." Mr. Wyles reported that he has driven straight trucks for 23 years, accumulating 644,000 miles and tractor-trailer combinations for 3 years, accumulating 120,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

III. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and put the docket number FMCSA-2017-0017 in the "Keyword" box, and click "Search". When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and insert the docket number FMCSA-2017-0017 in the "Keyword" box and click "Search." Next, click "Open Docket Folder" button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: April 27, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017-09000 Filed 5-3-17; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2016-0035]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 46 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on May 13, 2016. The exemptions expire on May 13, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-113, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

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., e.t., 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 April 12, 2016, FMCSA published a notice of receipt of Federal diabetes exemption applications from 46 individuals and requested comments from the public (81 FR 21649.) The public comment period closed on May 12, 2016, and no comments were received.

FMCSA has evaluated the eligibility of the 46 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides

the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 46 applicants have had ITDM over a range of 1 to 51 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the April 12, 2016, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive

medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) 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 (4) 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 also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 46 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

William M. Adams (SC)
 Gerald L. Beideck (OR)
 John J. Bizanos (NY)
 Joseph T. Bohnert (PA)
 Phillip J. Boruszewski (IL)
 Harold F. Braithwaite (OH)
 Kenneth H. Brown (NY)
 Alfred S. Church, Jr. (IN)
 James R. Conley (IN)
 Irvin L. Davis (VA)
 Richard J. Dudzenski (PA)
 William M. Dutton (ND)
 Richard W. Favier (CT)
 Richard G. Fiscus, Jr. (MA)
 Donald Fleming (IL)
 Sergio Garza (IL)
 Stanley L. Gear (MO)
 Ira S. Gelb (MA)
 Raymond C. Hartill (WA)
 Todd E. Himebauch (IL)
 John R. Hofmann, Jr. (IL)
 Matthew E. Ingham (WA)
 Grant L. Jensen (SD)
 Victor E. Kaneps (CO)
 Albert J. Laubauskas (NJ)
 Michael M. Lillie (MI)
 Barrington F. Mahabee (NY)
 Brandon T. A. Maines (MT)
 Robert J. Marnell (IA)
 Clayton E. McCoy (TX)
 Andrew J. Neset (ND)
 Scott A. Newell (MI)
 Braydon D. Paytas (UT)
 Edward C. Pisiakowski (CT)
 William J. Pratt (MN)
 Juan Rangel (CA)

Kyle L. Roy (OH)
 Nicola D. Santopietro (CT)
 Gary R. Silver (FL)
 Ryan D. Simmons (WA)
 Jerry G. Smith (NC)
 William J. Taylor (IN)
 Roy E. Tompkins (NY)
 Vasilios Tsimis (NY)
 Craig J. Voudren (VA)
 Donald L. Yamauchi (MN)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (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(e) 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: April 27, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017-09004 Filed 5-3-17; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2000-7257, Notice No. 85]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration, Department of Transportation.

ACTION: Notice of Railroad Safety Advisory Committee (RSAC) meeting.

SUMMARY: FRA announces the fifty-seventh meeting of the RSAC, a Federal Advisory Committee (Committee) that develops recommendations on railroad safety regulations and other railroad safety issues through a consensus process. This meeting has been rescheduled from January 26, 2017, the previously announced date. The RSAC meeting topics will include opening remarks from the FRA Associate Administrator for Railroad Safety and Chief Safety Officer, as well as a status report from the Engineering Task Force. In addition, FRA will present to the Committee the consensus recommendations from the Hazardous Materials Working Group's retrospective review of certain portions of the Hazardous Materials Regulations, with

the intent of moving for a Committee vote to approve the same. This agenda is subject to change, including the possible addition of further proposed tasks.

DATES: The RSAC meeting is scheduled to commence at 9:30 a.m. on Thursday, May 25, 2017, and will adjourn by 4:30 p.m.

ADDRESSES: The RSAC meeting will be held at the National Association of Home Builders, National Housing Center, located at 1201 15th Street NW., Washington, DC 20005. The meeting is open to the public on a first-come, first-served basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

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: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), FRA is giving notice of a meeting of the RSAC. 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. 2017-08958 Filed 5-3-17; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Allocation Availability (NOAA) Inviting Applications for the Calendar Year (CY) 2017 Allocation Round of the New Markets Tax Credit (NMTC) Program

Announcement Type: Announcement of allocation availability.

Dates: Electronic applications must be received by 5:00 p.m. ET on June 21, 2017. Applications sent by mail, facsimile, or other form will not be accepted. Please note the Community Development Financial Institutions Fund (CDFI Fund) will only accept applications and attachments (*e.g.*, the Controlling Entity's representative signature page, Assurances and Certifications supporting documents, investor letters, organizational charts) in electronic form (see Section IV.C of this NOAA for more details). Applications must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOAA. Any Applicant that is not yet certified as a Community Development Entity (CDE) must submit an application for CDE certification through the CDFI Fund's Awards Management Information System (AMIS) on or before 5:00 p.m. ET on May 17, 2017 (see Section III.A.1 of this NOAA for more details on CDE certification).

Executive Summary: This NOAA is issued in connection with the CY 2017 allocation round (Allocation Round) of the New Markets Tax Credit Program (NMTC Program), as authorized by Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106-554) and amended by section 221 of the American Jobs Creation Act of 2004 (Pub. L. 108-357), section 101 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 108-357), Division A, section 102 of the Tax Relief and Health Care Act of 2006 (Pub. L. 109-432), section 733 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (Pub. L. 111-312), section 305 of the American Taxpayer Relief Act of 2012 (Pub. L. 112-240), and section 115 of the Tax Increase Prevention Act of 2014 (Pub. L. 113-295), section 141 of the Protecting Americans from Tax Hikes Act (PATH) of 2015. Through the NMTC Program, the CDFI Fund provides authority to CDEs to offer an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn,

will facilitate economic and community development in Low-Income Communities. Through this NOAA, the CDFI Fund announces the availability of \$3.5 billion of NMTC allocation authority in this Allocation Round.

In this NOAA, the CDFI Fund specifically addresses how a CDE may apply to receive an allocation of NMTCs, the competitive procedure through which NMTC allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities.

I. Allocation Availability Description

A. Programmatic changes from the Combined CY 2015–2016 allocation round:

1. *Prior QEI Issuance Requirements:* In order to be eligible to apply for a NMTC allocation in this Allocation Round, as described in Section III.A.3(a), any Applicant that received a NMTC allocation award in a previous Allocation round is required to meet the corresponding minimum Qualified Equity Investment (QEI) issuance threshold with respect to its prior-year allocation. These thresholds and deadlines have been revised in comparison to the CY 2015–16 NOAA.

B. Program guidance and regulations: This NOAA describes application and allocation requirements for this Allocation Round of the NMTC Program and should be read in conjunction with: (i) Guidance published by the CDFI Fund on how an entity may apply to become certified as a CDE (66 FR 65806, December 20, 2001); (ii) the final regulations issued by the Internal Revenue Service (the IRS) (26 CFR 1.45D–1, published on December 28, 2004), as amended and related guidance, notices and other publications; and (iii) the application and related materials for this Allocation Round. All such materials may be found on the CDFI Fund's Web site at <https://www.cdfifund.gov>. The CDFI Fund requires Applicants to review these documents. Capitalized terms used, but not defined, in this NOAA have the respective meanings assigned to them in the NMTC Program Allocation application, IRC § 45D or the IRS regulations. In the event of any inconsistency between this NOAA, the allocation application, and guidance issued by the CDFI Fund thereto, IRC § 45D or the IRS regulations, the provisions of IRC § 45D and the IRS regulations shall govern.

II. Allocation Information

A. Allocation amounts: Pursuant to the Act, the CDFI Fund expects that it may allocate to CDEs the authority to

issue to their investors the aggregate amount of \$3.5 billion in equity as to which NMTCs may be claimed, as permitted under IRC § 45D(f)(1)(D). Pursuant to this NOAA, the CDFI Fund anticipates that it will not issue more than \$100 million in tax credit investment authority per Allocatee. The CDFI Fund, in its sole discretion, reserves the right to allocate amounts in excess of or less than the anticipated maximum allocation amount should the CDFI Fund deem it appropriate. In order to receive an allocation in excess of the \$100 million cap, an Applicant, at a minimum, must demonstrate that: (i) No part of its strategy can be successfully implemented without an allocation in excess of the applicable cap; and/or (ii) its strategy will produce extraordinary community outcomes. The CDFI Fund reserves the right to allocate NMTC authority to any, all, or none of the entities that submit applications in response to this NOAA, and in any amounts it deems appropriate.

B. Type of award: NMTC Program awards are made in the form of allocations of tax credit investment authority.

C. Allocation Agreement: Each Allocatee must sign an Allocation Agreement, which must be countersigned by the CDFI Fund, before the NMTC allocation is effective. The Allocation Agreement contains the terms and conditions of the NMTC allocation. For further information, see Section VI of this NOAA.

III. Eligibility

A. Eligible Applicants: IRC § 45D specifies certain eligibility requirements that each Applicant must meet to be eligible to apply for an allocation of NMTCs. The following sets forth additional detail and certain additional dates that relate to the submission of applications under this NOAA for the available NMTC allocation authority.

1. *CDE certification:* For purposes of this NOAA, the CDFI Fund will not consider an application for an allocation of NMTCs unless: (a) The Applicant is certified as a CDE at the time the CDFI Fund receives its NMTC Program allocation application; or (b) the Applicant submits an application for certification as a CDE through the CDFI Fund's Awards Management Information System (AMIS) on or before 5:00 p.m. ET on May 17, 2017. Applicants for CDE certification may obtain information regarding CDE certification and the CDE certification application process in AMIS on the CDFI Fund's Web site at <https://www.cdfifund.gov>.

Applications for CDE certification must be submitted in AMIS. Paper versions of the CDE certification application will not be accepted.

The CDFI Fund will not provide NMTC allocation authority to Applicants that are not certified as CDEs or to entities that are certified as Subsidiary CDEs.

If an Applicant that has already been certified as a CDE wishes to change its designated CDE Service Area, it must submit its request for such change to the CDFI Fund, and the request must be received by the CDFI Fund by 5:00 p.m. ET on May 17, 2017. A request to change a CDE's Service Area must be submitted through the CDFI Fund's Awards Management Information System (AMIS) as a Service Request. Such requests will need to include, at a minimum, the applicable CDE control number, the revised service area designation, and updated accountability information that demonstrates that the CDE has the required representation from Low-Income Communities in the revised Service Area.

2. *As a condition of eligibility for this Allocation Round, the Applicant will not be permitted the use of the proceeds of Qualified Equity Investments (QEIs) to make Qualified Low-Income Community Investments (QLICIs) in Qualified Active Low-Income Community Businesses (QALICBs) where QLICI proceeds are used, in whole or in part, to repay or refinance a debt or equity provider whose capital was used to fund the QEI, or are used to repay or refinance any Affiliate of such a debt or equity provider, except where:* (i) The QLICI proceeds are used to repay or refinance documented reasonable expenditures that are directly attributable to the qualified business of the QALICB, and such past expenditures were incurred no more than 24 months prior to the QLICI closing date; or (ii) no more than five percent of the total QLICI proceeds from the QEI are used to repay or refinance documented reasonable expenditures that are directly attributable to the qualified business of the QALICB. Refinance includes transferring cash or property, directly or indirectly, to the debt or equity provider or an Affiliate of the debt or equity provider.

3. *Prior award recipients or Allocatees:* Applicants must be aware that success in a prior application or allocation round of any of the CDFI Fund's programs is not indicative of success under this NOAA. For purposes of this section, the CDFI Fund will consider an Affiliate to be any entity that meets the definition of Affiliate as defined in the NMTC allocation

application materials, or any entity otherwise identified as an Affiliate by the Applicant in its NMTC allocation application materials. Prior award recipients of any CDFI Fund program are eligible to apply under this NOAA, except as follows:

a. Prior Allocatees and Qualified Equity Investment (QEI) issuance requirements: The following describes the QEI issuance requirements applicable to prior Allocatees.

An Allocatee in the CY 2011 allocation round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on August 18, 2017, it has finalized 100 percent of its QEIs relating to its CY 2011 NMTC allocation.

An Allocatee in the CY 2012 allocation round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on August 18, 2017, it has finalized at least 80 percent of its QEIs relating to its CY 2012 NMTC allocation.

An Allocatee in the CY 2013 allocation round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on August 18, 2017, it has finalized at least 70 percent of its QEIs relating to its CY 2013 NMTC allocation.

An Allocatee (with the exception of a Rural CDE Allocatee) in the CY 2014 allocation round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on August 18, 2017, it has finalized at least 50 percent of its QEIs relating to its CY 2014 NMTC allocation. A prior Rural CDE Allocatee awarded in the CY 2014 allocation round is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on August 18, 2017, it has finalized at least 30 percent of its CY 2014 NMTC Allocation.

An Allocatee (with the exception of a Rural CDE Allocatee) in the CY 2015–16 allocation round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on August 18, 2017, it has finalized at least 30 percent of its QEIs relating to its CY 2015–16 NMTC allocation. A Rural CDE Allocatee awarded in the CY 2015–16 Round is

not required to meet the above QEI issuance thresholds with regard to its CY 2015–16 NMTC allocation award.

Alternatively, an Applicant that has received multiple NMTC allocations between CY 2011 and CY 2015–16 Rounds can also meet the QEI issuance requirements on a cumulative basis. If an Applicant has received multiple NMTC allocation awards between CY 2011 and CY 2015–16, the Applicant shall be deemed to be eligible to apply for a NMTC allocation pursuant to this NOAA if the Applicant is able to affirmatively demonstrate that, as of 11:59 p.m. ET on August 18, 2017, it has finalized at least 90 percent of its QEIs relating to its cumulative allocation amounts from these prior NMTC Program rounds. Rural CDEs that received allocations under the CY 2014 allocation round may choose to exclude such allocations from this cumulative calculation, provided that the Allocatee has finalized at least 20 percent of its QEIs relating to its CY 2014 allocation. Rural CDEs that received allocations under the CY 2015–16 allocation round may choose to exclude such allocation from this cumulative calculation.

In addition to the requirements described above, an entity is not eligible to receive a NMTC allocation pursuant to this NOAA if an Affiliate of the Applicant is a prior Allocatee and has not met the requirements for the issuance and/or commitment of QEIs as set forth above for the Allocatees in the prior allocation rounds of the NMTC Program.

For purposes of this section of the NOAA, the CDFI Fund will only recognize as “finalized” those QEIs that have been properly reported in the CDFI Fund’s Allocation Tracking System (ATS) by the deadlines specified above. Allocatees and their Subsidiary Allocatees, if any, are advised to access ATS to record each QEI that they issue to an investor in exchange for funds in-hand.

Applicants will be required, upon notification from the CDFI Fund, to submit adequate documentation to substantiate the required issuances of QEIs.

Applicants should be aware that these QEI issuance requirements represent the minimum threshold requirements that must be met in order to submit an application for assistance under this NOAA. As stated in Section V.C.1 of this NOAA, the CDFI Fund reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process—including an Applicant’s track record of raising QEIs and/or deploying its Qualified Low

Income Community Investments (QLICIs).

Any prior Allocatees that requires any action by the CDFI Fund (e.g., certifying a subsidiary entity as a CDE, adding a subsidiary CDE to an Allocation Agreement) in order to meet the QEI issuance requirements above must submit a Certification Application for subsidiary CDEs by no later than May 17, 2017 and Allocation Agreement Amendment requests by no later than July 9, 2017 in order to guarantee that the CDFI Fund completes all necessary approvals prior to August 18, 2017. Applicants for CDE certification, including for Subsidiary CDE certification, may obtain information regarding CDE certification and the CDE certification application process in AMIS on the CDFI Fund’s Web site at <https://www.cdfifund.gov>. Applications for CDE certification must be submitted in AMIS. Paper versions of the CDE certification application will not be accepted.

b. *Pending determination of noncompliance or default*: If an Applicant is a prior award recipient or Allocatee under any CDFI Fund program and if: (i) It has submitted reports to the CDFI Fund that demonstrate potential noncompliance with or default under a previous assistance, award or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance or default of its previous assistance, award or Allocation Agreement, the CDFI Fund will consider the Applicant’s application under this NOAA pending final determination of whether the entity is in noncompliance or default, in the sole determination of the CDFI Fund. Further, if an Affiliate of the Applicant is a prior CDFI Fund award recipient or Allocatee and if such entity: (i) Has submitted reports to the CDFI Fund that demonstrate potential noncompliance with or default under a previous assistance, award or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance or default of its previous assistance, award or Allocation Agreement, the CDFI Fund will consider the Applicant’s application under this NOAA pending final determination of whether the entity is in noncompliance or default, in the sole determination of the CDFI Fund.

Moreover, if an Applicant is a prior Allocatee, and is otherwise eligible as of the application deadline, the Applicant must continue to be compliant with its Allocation Agreement(s) after the application deadline, in order for the

CDFI Fund to continue evaluating its application. If an Applicant fails to do such, the CDFI Fund will no longer deem the Applicant eligible.

c. *Default status:* The CDFI Fund will not consider an application submitted by an Applicant that is a prior CDFI Fund award recipient or Allocatee under any CDFI Fund program if, as of the application deadline of this NOAA: (i) The CDFI Fund has made a determination that such Applicant is in default of a previously executed assistance, allocation, or award agreement; (ii) the CDFI Fund has provided written notification of such determination to the Applicant; and (iii) the application deadline of the NOAA is within a period of time specified in the CDFI Fund's notification to the prior CDFI Fund award recipient or Allocatee for which any new application from the Applicant to the CDFI Fund for an award, allocation, or assistance is prohibited. Further, the CDFI Fund will not consider an application submitted by an Applicant for which there is an Affiliate that is a prior award recipient or Allocatee under any CDFI Fund Program if, as of the application deadline of this NOAA: (i) The CDFI Fund has made a determination that such Affiliate is in default of a previously executed assistance, allocation, or award agreement; (ii) the CDFI Fund has provided written notification of such determination to the Affiliate; and (iii) the application deadline of the NOAA is within a period of time specified in a notification to the prior CDFI Fund award recipient or Allocatee for which any new application from the Affiliate to the CDFI Fund for an award, allocation, or assistance is prohibited.

d. *Contact the CDFI Fund:* Accordingly, Applicants that are prior award recipients and/or Allocatees under any other CDFI Fund program are advised to comply with the requirements specified in assistance, allocation and/or award agreement(s). All outstanding reports and compliance questions should be directed to the Office of Certification, Compliance Monitoring, and Evaluation through a Service Request initiated in AMIS. Requests submitted less than thirty calendar days prior to the application deadline may not receive a response before the application deadline.

The CDFI Fund will respond to Applicants' reporting, compliance or disbursement questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting the date of publication of this NOAA through June 19, 2017 (two days before the application deadline). The CDFI Fund will not respond to

Applicants' reporting, compliance, CDE certification, or disbursement phone calls or email inquiries that are received after 5:00 p.m. ET on June 19, 2017 until after the funding application deadline of June 21, 2017.

4. *Failure to accurately respond to a question in the Assurances and Certifications section of the application and submit the required written explanation:* In its sole discretion, the CDFI Fund may deem the Applicant's application ineligible, if the CDFI Fund determines that the Applicant inaccurately responded to a question and failed to submit a required written explanation, or accurately answered a question yet failed to submit a required written explanation, with respect to the application Assurances and Certifications. In making this determination, the CDFI Fund will take into consideration, among other factors, the materiality of the question, the substance of any supplemental responses provided, and whether the information in the Applicant's supplemental responses will have a material adverse effect on the Applicant, its financial condition or its ability to perform under an allocation agreement, should the Applicant receive an allocation.

5. *Entities that propose to transfer NMTCs to Subsidiaries:* Both for-profit and non-profit CDEs may apply for NMTC allocation authority, but only a for-profit CDE is permitted to provide NMTCs to its investors. A non-profit Applicant wishing to apply for a NMTC allocation must demonstrate, prior to entering into an Allocation Agreement with the CDFI Fund, that: (i) It controls one or more Subsidiaries that are for-profit entities; and (ii) it intends to transfer the full amount of any NMTC allocation it receives to said Subsidiaries.

An Applicant wishing to transfer all or a portion of its NMTC allocation to a Subsidiary is not required to create the Subsidiary prior to submitting a NMTC allocation application to the CDFI Fund. However, the Subsidiary entities must be certified as CDEs by the CDFI Fund, and enjoined as parties to the Allocation Agreement at closing or by amendment to the Allocation Agreement after closing. Before the NMTC allocation transfer may occur it must be pre-approved by the CDFI Fund, in its sole discretion.

The CDFI Fund strongly encourages a non-profit Applicant to submit a CDE certification application to the CDFI Fund on behalf of at least one Subsidiary within 60 days after the non-profit Applicant receives the Notice of Allocation (NOA) from the CDFI Fund,

as such Subsidiary must be certified as a CDE prior to entering into an Allocation Agreement with the CDFI Fund. A non-profit Applicant that does not already have a certified for-profit Subsidiary and that fails to submit a certification application for one or more for-profit Subsidiaries within 60 days of the date of the NOA from the CDFI Fund is subject to the CDFI Fund rescinding the award.

6. Entities that submit applications together with Affiliates; applications from common enterprises:

a. As part of the allocation application review process, the CDFI Fund will evaluate whether Applicants are Affiliates, as such term is defined in the allocation application. If an Applicant and its Affiliate(s) wish to submit allocation applications, they must do so collectively, in one application; an Applicant and its Affiliate(s) may not submit separate allocation applications. If Affiliated entities submit multiple applications, the CDFI Fund will reject all such applications received, except for those State-owned or State-controlled governmental Affiliated entities. In the case of State-owned or State-controlled governmental entities, the CDFI Fund may accept applications submitted by different government bodies within the same State, but only to the extent the CDFI Fund determines that the business strategies and/or activities described in such applications, submitted by separate entities, are distinctly dissimilar and/or are operated and/or managed by distinctly dissimilar personnel, including staff, board members or identified consultants. If the CDFI Fund determines that the applications submitted by different government bodies in the same State are not distinctly dissimilar and/or operated and/or managed by distinctly dissimilar personnel, it will reject all such applications. In such cases, the CDFI Fund reserves the right to limit award amounts to such entities to ensure that the entities do not collectively receive more than the \$100 million cap.

b. For purposes of this NOAA, the CDFI Fund will also evaluate whether each Applicant is operated or managed as a "common enterprise" with another Applicant in this Allocation Round using the following indicia, among others: (i) Whether different Applicants have the same individual(s), including the Authorized Representative, staff, board members and/or consultants, involved in day-to-day management, operations and/or investment responsibilities; (ii) whether the Applicants have business strategies and/or proposed activities that are so similar

or so closely related that, in fact or effect, they may be viewed as a single entity; and/or (iii) whether the applications submitted by separate Applicants contain significant narrative, textual or other similarities such that they may, in fact or effect, be viewed as substantially identical applications. In such cases, the CDFI Fund will reject all applications received from such entities.

c. Furthermore, an Applicant that receives an allocation in this Allocation Round (or its Subsidiary Allocatee) may not become an Affiliate of or member of a common enterprise (as defined above) with another Applicant that receives an allocation in this Allocation Round (or its Subsidiary Allocatee) at any time after the submission of an allocation application under this NOAA. This prohibition, however, generally does not apply to entities that are commonly Controlled solely because of common ownership by QEI investors. This requirement will also be a term and condition of the Allocation Agreement (see Section VI.B of this NOAA and additional application guidance materials on the CDFI Fund's Web site at <https://www.cdfifund.gov> for more details).

7. *Entities created as a series of funds:* An Applicant whose business structure consists of an entity with a series of funds must apply for CDE certification for each fund. If such an Applicant represents that it is properly classified for Federal tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If an Applicant represents that it is properly classified for Federal tax purposes as multiple partnerships or corporations, then it must submit a CDE certification application for the Applicant and each fund it would like to participate in the NMTC Program, and each fund must be separately certified as a CDE. Applicants should note, however, that receipt of CDE certification as a single entity or as multiple entities is not a determination that an Applicant and its related funds are properly classified as a single entity or as multiple entities for Federal tax purposes. Regardless of whether the series of funds is classified as a single partnership or corporation or as multiple partnerships or corporations, an Applicant may not transfer any NMTC allocations it receives to one or more of its funds unless the fund is a certified CDE that is a Subsidiary of the Applicant, enjoined to the Allocation Agreement as a Subsidiary Allocatee.

8. *Entities that are Bank Enterprise Award Program (BEA Program) award recipients:* An insured depository institution investor (and its Affiliates

and Subsidiaries) may not receive a NMTC allocation in addition to a BEA Program award for the same investment in a CDE. Likewise, an insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a BEA Program award in addition to a NMTC allocation for the same investment in a CDE.

IV. Application and Submission Information

A. *Address to request application package:* Applicants must submit applications electronically under this NOAA, through the CDFI Fund Web site. Following the publication of this NOAA, the CDFI Fund will make the electronic allocation application available on its Web site at <https://www.cdfifund.gov>. Applications sent by mail, facsimile or other form will not be accepted. Please note the CDFI Fund will only accept the application and attachments (e.g., the Controlling Entity's representative signature page, Assurances and Certifications supporting documents, investor letters, organizational charts) in electronic form.

B. *Application content requirements:* Detailed application content requirements are found in the application related to this NOAA. Applicants must submit all materials described in and required by the application by the applicable deadlines. Applicants will not be afforded an opportunity to provide any missing materials or documentation, except, if necessary and at the request of the CDFI Fund. Electronic applications must be submitted solely by using the format made available at the CDFI Fund's Web site. Additional information, including instructions relating to the submission of supporting information (e.g., the Controlling Entity's representative signature page, Assurances and Certifications supporting documents, investor letters, organizational charts), is set forth in further detail in the NMTC Online Application Instructions for this Allocation Round. An application must include a valid and current Employer Identification Number (EIN) issued by the Internal Revenue Service (IRS) and assigned to the Applicant and, if applicable, their Controlling Entity. Electronic applications without a valid EIN are incomplete and cannot be transmitted to the CDFI Fund. For more information on obtaining an EIN, please contact the IRS at (800) 829-4933 or www.irs.gov. Do not include any personal Social Security Numbers as part of the application.

An Applicant may not submit more than one application in response to this

NOAA. In addition, as stated in Section III.A.6 of this NOAA, an Applicant and its Affiliates must collectively submit only one allocation application; an Applicant and its Affiliates may not submit separate allocation applications except as outlined in Section III.A.6 above. Once an application is submitted, an Applicant will not be allowed to change any element of its application.

C. *Form of application submission:* Applicants may only submit applications under this NOAA electronically. Applications sent by facsimile or by email will not be accepted. Submission of an electronic application will facilitate the processing and review of applications and the selection of Allocatees; further, it will assist the CDFI Fund in the implementation of electronic reporting requirements.

Electronic applications must be submitted solely by using the CDFI Fund's Web site and must be in accordance with the submission instructions provided in the NMTC Online Application Instruction for this Allocation Rounds. The CDFI Fund recommends use of Internet Explorer version 8 or higher on a Microsoft Windows-based computer (Windows Vista or higher), and optimally at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. Use of other browsers (e.g., Firefox, Chrome, Safari), other versions of Internet Explorer, or other operating systems (e.g., Mac) might result in problems during submission of the application. The CDFI Fund's electronic application system will only permit the submission of applications in which all required questions and tables are fully completed. Additional information, including instructions relating to the submission of supporting information (e.g., the Controlling Entity's representative signature page, Assurances and Certifications supporting documents, investor letters, organizational charts) is set forth in further detail in the NMTC Online Application Instructions for this Allocation Round.

D. *Application submission dates and times:*

1. Application deadlines:
a. Electronic applications must be received by 5:00 p.m. ET on June 21, 2017. Electronic applications cannot be transmitted or received after 5:00 p.m. ET on June 21, 2017. In addition, Applicants must separately electronically submit supporting information (e.g., the Controlling Entity's representative signature page,

Assurances and Certifications supporting documents, investor letters, and organizational charts). The Controlling Entity's representative signature page, Assurances and Certifications supporting documents, investor letters and organizational charts must be submitted on or before 11:59 p.m. on June 26, 2017. For details, see the instructions provided in the NMTC Online Application Instructions for this Allocation Round on the CDFI Fund's Web site.

Applications and other required documents received after this date and time will be rejected. Please note that the document submission deadlines in this NOAA and/or the allocation application are strictly enforced.

E. Intergovernmental Review: Not applicable.

F. Funding Restrictions: For allowable uses of investment proceeds related to a NMTC allocation, please see 26 U.S.C. 45D and the final regulations issued by the Internal Revenue Service (26 CFR 1.45D-1, published December 28, 2004 and as amended) and related guidance. Please see Section I, above, for the Programmatic Changes of this NOAA.

G. Paperwork Reduction: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the application has been assigned the following control number: 1559-0016.

V. Application Review Information

A. Review and selection process: All allocation applications will be reviewed for eligibility and completeness. To be complete, the application must contain, at a minimum, all information described as required in the application form. An incomplete application will be rejected. Once the application has been determined to be eligible and complete, the CDFI Fund will conduct the substantive review of each application in two parts (Phase 1 and Phase 2) in accordance with the criteria and procedures generally described in this NOAA and the allocation application.

In Phase 1, three reviewers will evaluate and score the Business Strategy and Community Outcomes sections of each application. An Applicant must exceed a minimum overall aggregate base score threshold *and* exceed a minimum aggregate section score threshold in each scored section in order to advance from the Phase 1 to the Phase 2 part of the substantive review process. In Phase 2, the CDFI Fund will

rank Applicants and determine the dollar amount of allocation authority awarded in accordance with the procedures set forth below.

B. Criteria:

1. Business Strategy (25-point maximum):

a. When assessing an Applicant's business strategy, reviewers will consider, among other things: The Applicant's products, services and investment criteria; the prior performance of the Applicant or its Controlling Entity, particularly as it relates to making similar kinds of investments as those it proposes to make with the proceeds of QEIs; the Applicant's prior performance in providing capital or technical assistance to disadvantaged businesses or communities; the projected level of the Applicant's pipeline of potential investments; the extent to which the Applicant intends to make QLICs in one or more businesses in which persons unrelated to the entity hold a majority equity interest; and the extent to which Applicants that otherwise have notable relationships with the Qualified Active Low Income Community Businesses (QALICBs) financed will create benefits (beyond those created in the normal course of a NMTC transaction) to Low-Income Communities.

Under the Business Strategy criterion, an Applicant will generally score well to the extent that it will deploy debt or investment capital in products or services which are flexible or non-traditional in form and on better terms than available in the marketplace. An Applicant will also score well to the extent that, among other things: (i) It has a track record of successfully deploying loans or equity investments and providing services similar to those it intends to provide with the proceeds of QEIs; (ii) it has identified a set of clearly-defined potential borrowers or investees; (iii) its projected dollar volume of NMTC deployment is supported by its track record of deployment; (iv) in the case of an Applicant proposing to purchase loans from CDEs, the Applicant will require the CDE selling such loans to re-invest the proceeds of the loan sale to provide additional products and services to Low-Income Communities.

b. Priority Points: In addition, as provided by IRC § 45D(f)(2), the CDFI Fund will ascribe additional points to entities that meet one or both of the statutory priorities. First, the CDFI Fund will give up to five (5) additional points to any Applicant that has a record of having successfully provided capital or technical assistance to disadvantaged

businesses or communities. Second, the CDFI Fund will give five (5) additional points to any Applicant that intends to satisfy the requirement of IRC § 45D(b)(1)(B) by making QLICs in one or more businesses in which persons unrelated (within the meaning of IRC § 267(b) or IRC § 707(b)(1)) to an Applicant (and the Applicant's subsidiary CDEs, if the *Subsidiary Allocatee* makes the *QLIC*) hold the majority equity interest. Applicants may earn points for one or both statutory priorities. Thus, Applicants that meet the requirements of both priority categories can receive up to a total of ten (10) additional points. A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities may be demonstrated either by the past actions of an Applicant itself or by its Controlling Entity (*e.g.*, where a new CDE is established by a nonprofit corporation with a history of providing assistance to disadvantaged communities). An Applicant that receives additional points for intending to make investments in unrelated businesses and is awarded a NMTC allocation must meet the requirements of IRC § 45D(b)(1)(B) by investing substantially all of the proceeds from its QEIs in unrelated businesses. The CDFI Fund will factor in an Applicant's priority points when ranking Applicants during Phase 2 of the review process, as described below.

2. Community Outcomes (25-point maximum): In assessing the potential benefits to Low-Income Communities that may result from the Applicant's proposed investments, reviewers will consider, among other things, the degree to which the Applicant is likely to: (i) Achieve significant and measurable community development outcomes in its Low-Income Communities; (ii) invest in particularly economically distressed markets; (iii) Engage with local communities regarding investments; (iv) the level of involvement of community representatives in the Governing Board and/or Advisory Board in approving investment criteria or decisions; and (v) demonstrate a track record of investing in businesses that spur additional private capital investment in Low-Income Communities.

An Applicant will generally score well under this section to the extent that, among other things: (a) It has a track record of producing quantitative and qualitative community outcomes that are similar to those projected to be achieved with an NMTC allocation; (b) it is working in particularly economically distressed or otherwise underserved communities; (c) its

activities are part of a broader community or economic development strategy; (d) it demonstrates a track record of community engagement around past investment decisions; (e) it ensures that an NMTC investment into a project or business is supported by and will be beneficial to Low-Income Persons and residents of Low-Income Communities (LICs); and (f) it is likely to engage in activities that will spur additional private capital investment.

C. Phase 2 Evaluation.

1. Final Rank Score.

a. *Anomaly Reviews:* Using the numeric scores from Phase 1, Applicants are ranked on the basis of each Applicant's combined scores in the Business Strategy and Community Outcomes sections of the application plus one half of the priority points. If, in the case of a particular application, a reviewer's total base score or section score(s) (in one or more of the two application scored sections) varies significantly from the median of the three reviewers' total base scores or section scores for such application, the CDFI Fund may, in its sole discretion, obtain the evaluation and numeric scoring of an additional fourth reviewer to determine whether the anomalous score should be replaced with the score of the additional fourth reviewer.

b. *Late Reports:* In the case of an Applicant or any Affiliates that has previously received an award or allocation from the CDFI Fund through any CDFI Fund program, the CDFI Fund will deduct points from the Applicant's "Final Rank Score" for the Applicant's (or its Affiliate's) failure to meet any of the reporting deadlines set forth in any assistance, award or Allocation Agreement(s), if the reporting deadlines occurred during the period from December 17, 2015 to the application deadline in this NOA (June 21, 2017).

c. *Prior Year Allocatees:* In the case of Applicants (or their Affiliates) that are prior year Allocatees, the CDFI Fund will review the activities of the prior year Allocatee to determine whether the entity has: (a) Effectively utilized its prior-year allocations in a manner generally consistent with the representations made in the relevant allocation application (including, but not limited to, the proposed product offerings, QALICB type, and markets served); and (b) substantiated a need for additional allocation authority. The CDFI Fund will use this information in determining whether to reject or reduce the allocation award amount of its NMTC allocation application. The CDFI Fund will award allocations in the order of the "Final Rank Score," subject to Applicants meeting all other eligibility

requirements; provided, however, that the CDFI Fund, in its sole discretion, reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process.

2. *Management Capacity:* In assessing an Applicant's management capacity, CDFI Fund will consider, among other things, the qualifications of the Applicant's Principals, its board members, its management team, and other essential staff or contractors, with specific focus on: Experience in providing loans, equity investments or financial counseling and other services, including activities similar to those described in the Applicant's business strategy; asset management and risk management experience; experience with fulfilling compliance requirements of other governmental programs, including other tax programs; and the Applicant's (or its Controlling Entity's) financial health. CDFI Fund evaluators will also consider the extent to which an Applicant has protocols in place to ensure ongoing compliance with NMTC Program requirements and the Applicant's projected income and expenses related to managing an NMTC allocation.

An Applicant will be generally evaluated more favorably under this section to the extent that its management team or other essential personnel have experience in: (a) Providing loans, equity investments or financial counseling and other services in Low-Income Communities, particularly those likely to be served by the Applicant with the proceeds of QEIs; (b) asset and risk management; and (c) fulfilling government compliance requirements, particularly tax credit program compliance. An Applicant will also be evaluated favorably to the extent it demonstrates strong financial health and a high likelihood of remaining a going-concern; it clearly explains levels of income and expenses; has policies and systems in place to ensure ongoing compliance with NMTC Program requirements; and, if it is a Federally-insured financial institution, its most recent Community Reinvestment Act (CRA) rating was "outstanding."

3. *Capitalization Strategy:* When assessing an Applicant's capitalization strategy, CDFI Fund will consider, among other things: The key personnel of the Applicant (or Controlling Entity) and their track record of raising capital, particularly from for-profit investors; the extent to which the Applicant has secured investments or commitments to invest in NMTC (if applicable), or

indications of investor interest commensurate with its requested amount of tax credit allocations, or, if a prior Allocatee, the track record of the Applicant or its Affiliates in raising Qualified Equity Investments in the past five years; the Applicant's strategy for identifying additional investors, if necessary, including the Applicant's (or its Controlling Entity's) prior performance with raising equity from investors, particularly for-profit investors; the distribution of the economic benefits of the tax credit; and the extent to which the Applicant intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations.

An Applicant will be evaluated more favorably under this section to the extent that: (a) It or its Controlling Entity demonstrate a track record of raising investment capital; (b) it has secured investor commitments, or has a reasonable strategy for obtaining such commitments, or, if it or its Affiliates is a prior Allocatee with a track record in the past five years of raising Qualified Equity Investments or; (c) it generally demonstrates that the economic benefits of the tax credit will be passed through to a QALICB; and (d) it intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations. In the case of an Applicant proposing to raise investor funds from organizations that also will identify or originate transactions for the Applicant or from Affiliated entities, said Applicant will be evaluated more favorably to the extent that it will offer products with more favorable rates or terms than those currently offered by its investor(s) or Affiliated entities and/or will target its activities to areas of greater economic distress than those currently targeted by the investor or Affiliated entities.

D. *Allocations serving Non-Metropolitan counties:* As provided for under Section 102(b) of the Tax Relief and Health Care Act of 2006 (Pub. L. 109-432), the CDFI Fund shall ensure that Non-Metropolitan counties receive a proportional allocation of QEIs under the NMTC Program. To this end, the CDFI Fund will ensure that the proportion of Allocatees that are Rural CDEs is, at a minimum, equal to the proportion of Applicants in the highly qualified pool that are Rural CDEs. The CDFI Fund will also endeavor to ensure that 20 percent of the QLICIs to be made using QEI proceeds are invested in Non-Metropolitan counties. A Rural CDE is one that has a track record of at least three years of direct financing

experience, has dedicated at least 50 percent of its direct financing dollars to Non-Metropolitan counties over the past five years, and has committed that at least 50 percent of its NMTC financing dollars with this Allocation will be deployed in such areas. Non-Metropolitan counties are counties not contained within a Metropolitan Statistical Area, as such term is defined in OMB Bulletin No. 10–02 (Update of Statistical Area Definitions and Guidance on Their Uses) and applied using 2010 census tracts.

Applicants that meet the minimum scoring thresholds will be advanced to Phase 2 review and will be provided with “preliminary” awards, in descending order of Final Rank Score, until the available allocation authority is fulfilled. Once these “preliminary” award amounts are determined, the CDFI Fund will then analyze the Allocatee pool to determine whether the two Non-Metropolitan proportionality objectives have been met.

The CDFI Fund will first examine the “preliminary” awards and Allocatees to determine whether the percentage of Allocatees that are Rural CDEs is, at a minimum, equal to the percentage of Applicants in the highly qualified pool that are Rural CDEs. If this objective is not achieved, the CDFI Fund will provide awards to additional Rural CDEs from the highly qualified pool, in descending order of their Final Rank Score, until the appropriate percentage balance is achieved. In order to accommodate the additional Rural CDEs in the Allocatee pool within the available allocation limitations, a formula reduction will be applied as uniformly as possible to the allocation amount for all Allocatees in the pool that have not committed to investing a minimum of 20 percent of their QLICIs in Non-Metropolitan counties.

The CDFI Fund will then determine whether the pool of Allocatees will, in the aggregate, invest at least 20 percent of their QLICIs (as measured by dollar amount) in Non-Metropolitan counties. The CDFI Fund will first apply the “minimum” percentage of QLICIs that Allocatees indicated in their applications would be targeted to Non-Metropolitan areas to the total allocation award amount of each Allocatee (less whatever percentage the Allocatee indicated would be retained for non-QLICI activities), and total these figures for all Allocatees. If this aggregate total is greater than or equal to 20 percent of the QLICIs to be made by the Allocatees, then the pool is considered balanced and the CDFI Fund will proceed with the allocation process. However, if the aggregate total is less than 20 percent of

the QLICIs to be made by the Allocatees, the CDFI Fund will consider requiring any or all of the Allocatees to direct up to the “maximum” percentage of QLICIs that the Allocatees indicated would be targeted to Non-Metropolitan counties, taking into consideration their track record and ability to deploy dollars in Non-Metropolitan counties. If the CDFI Fund cannot meet the goal of 20 percent of QLICIs in Non-Metropolitan counties by requiring any or all Allocatees to commit up to the maximum percentage of QLICIs that they indicated would be targeted to Non-Metropolitan counties, the CDFI Fund may add additional Rural CDEs (in descending order of final rank score) to the Allocatee pool. In order to accommodate any additional Allocatees within the allocation limitations, a formula reduction will be applied as uniformly as possible, to the allocation amount for all Allocatees in the pool that have not committed to investing a minimum of 20 percent of their QLICIs in Non-Metropolitan counties.

E. Questions: All outstanding reports or compliance questions should be directed to the Office of Certification, Compliance Monitoring, and Evaluation through the submission of a Service Request in AMIS or by telephone at (202) 653–0423. The CDFI Fund will respond to reporting or compliance questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting the date of the publication of this NOAA through June 19, 2017. The CDFI Fund will not respond to reporting or compliance phone calls or email inquiries that are received after 5:00 p.m. ET on June 19, 2017 until after the funding application deadline of June 21, 2017.

F. Right of rejection: The CDFI Fund reserves the right to reject any NMTC allocation application in the case of a prior CDFI Fund award recipient, if such Applicant has failed to comply with the terms, conditions, and other requirements of the prior or existing assistance or award agreement(s) with the CDFI Fund. The CDFI Fund reserves the right to reject any NMTC allocation application in the case of a prior CDFI Fund Allocatee, if such Applicant has failed to comply with the terms, conditions, and other requirements of its prior or existing Allocation Agreement(s) with the CDFI Fund. The CDFI Fund reserves the right to reject any NMTC allocation application in the case of any Applicant, if an Affiliate of the Applicant has failed to meet the terms, conditions and other requirements of any prior or existing assistance agreement, award agreement or Allocation Agreement with the CDFI Fund.

The CDFI Fund reserves the right to reject or reduce the allocation award amount of any NMTC allocation application in the case of a prior Allocatee, if such Applicant has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy (including, but not limited to, the proposed product offerings, QALICB type, and markets served) set forth in the allocation application(s) related to such prior allocation(s) or such Applicant has been found by the IRS to have engaged in a transaction or series of transactions designed to achieve a result that is inconsistent with the purposes of IRC § 45D. The CDFI Fund also reserves the right to reject or reduce the allocation award amount of any NMTC allocation application in the case of an Affiliate of the Applicant that is a prior Allocatee and has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy set forth in the allocation application(s) related to such prior allocation(s) or has been found by the IRS to have engaged in a transaction or series of transactions designed to achieve a result that is inconsistent with the purposes of IRC § 45D.

The CDFI Fund reserves the right to reject an NMTC allocation application if information (including administrative errors or omission of information) comes to the attention of the CDFI Fund that adversely affects an Applicant’s eligibility for an award, adversely affects the CDFI Fund’s evaluation or scoring of an application, adversely affects the CDFI Fund’s prior determinations of CDE certification, or indicates fraud or mismanagement on the part of an Applicant or the Controlling Entity, if such fraud or mismanagement by the Controlling Entity would hinder the Applicant’s ability to perform under the Allocation Agreement. If the CDFI Fund determines that any portion of the application is incorrect in any material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the application.

As a part of the substantive review process, the CDFI Fund may permit the Allocation Recommendation Panel member(s) to request information from Applicants for the sole purpose of obtaining, clarifying or confirming application information or omission of information. In no event shall such contact be construed to permit an Applicant to change any element of its application. At this point in the process, an Applicant may be required to submit additional information about its application in order to assist the CDFI Fund with its final evaluation process.

If the Applicant (or the Controlling Entity or any Affiliate) has previously been awarded an NMTC allocation, the CDFI Fund may also request information on the use of those NMTC allocations, to the extent that this information has not already been reported to the CDFI Fund. Such requests must be responded to within the time parameters set by the CDFI Fund. The selecting official(s) will make a final allocation determination based on an Applicant's file, including, without limitation, eligibility under IRC § 45D, the reviewers' scores and the amount of allocation authority available.

In the case of Applicants (or the Controlling Entity, or Affiliates) that are regulated or receive oversight by the Federal government or a State agency (or comparable entity), the CDFI Fund may request additional information from the Applicant regarding Assurances and Certifications or other information about the ability of the Applicant to effectively perform under the Allocation Agreement. The Allocation Recommendation Panel or selecting official(s) reserve(s) the right to consult with and take into consideration the views of the appropriate Federal banking and other regulatory agencies. The CDFI Fund reserves the right to reject any NMTC Allocation Application if additional information is obtained that, after further due diligence and in the discretion of the CDFI Fund, would hinder the Applicant's ability to effectively perform under the Allocation Agreement. In the case of Applicants (or Affiliates of Applicants) that are also Small Business Investment Companies, Specialized Small Business Investment Companies or New Markets Venture Capital Companies, the CDFI Fund reserves the right to consult with and take into consideration the views of the Small Business Administration. An Applicant will not be awarded an allocation if it has a composite rating of "5" on its most recent examination, performed in accordance with the Uniform Financial Institutions Rating System.

Furthermore, the CDFI Fund will not award an NMTC allocation for the following reasons, if at the time of application or any time during the application review process through the closing of the Allocation Agreement, the Applicant received any of the following:

1. CRA assessment rating of below "Satisfactory" on its most recent examination;
2. A going concern opinion on its most recent audit; or
3. A Prompt Corrective Action directive from its regulator.

The CDFI Fund reserves the right to conduct additional due diligence, as

determined reasonable and appropriate by the CDFI Fund, in its sole discretion, related to the Applicant, Affiliates, the Applicant's Controlling Entity and the officers, directors, owners, partners and key employees of each. This includes the right to consult with the IRS if the Applicant (or the Controlling Entity, or Affiliates) has previously been awarded an NMTC allocation.

Each Applicant will be informed of the CDFI Fund's award decision through an electronic notification whether selected for an allocation or not selected for an allocation, which may be for reasons of application incompleteness, ineligibility or substantive issues. All Applicants that are not selected for an allocation based on substantive issues will likely be given the opportunity to receive feedback on their applications. This feedback will be provided in a format and within a timeframe to be determined by the CDFI Fund, based on available resources.

The CDFI Fund further reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If said changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information regarding the changes through the CDFI Fund's Web site.

There is no right to appeal the CDFI Fund's NMTC allocation decisions. The CDFI Fund's NMTC allocation decisions are final.

VI. Award Administration Information

A. Allocation Award Compliance

1. *Failure to meet reporting requirements:* If an Allocatee, or an Affiliate of an Allocatee, is a prior CDFI Fund award recipient or Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation, or award agreement(s), as of the date of the NOAA or thereafter, the CDFI Fund reserves the right, in its sole discretion, to reject the application, delay entering into an Allocation Agreement, and/or impose limitations on an Allocatee's ability to issue QELs to investors until said prior award recipient or Allocatee is current on the reporting requirements in the previously executed assistance, allocation, or award agreement(s). Please note that the automated systems the CDFI Fund uses for receipt of reports submitted electronically typically acknowledges only a report's receipt; such an acknowledgment does not warrant that the report received was complete and therefore met reporting requirements. If said prior award recipient or Allocatee is unable to meet

this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the allocation made under this NOAA.

2. *Pending determination of noncompliance or default:* If an Allocatee is a prior award recipient or Allocatee under any CDFI Fund program and if: (i) It has submitted reports to the CDFI Fund that demonstrate potential noncompliance with or a default under a previous assistance, award, or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance with or default under its previous assistance, award, or Allocation Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, pending final determination of whether the entity is in noncompliance or default, and determination of remedies, if applicable, in the sole determination of the CDFI Fund. Further, if an Affiliate of an Allocatee is a prior CDFI Fund award recipient or Allocatee and if such entity: (i) Has submitted reports to the CDFI Fund that demonstrate potential noncompliance/default under a previous assistance, award, or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance/default under its previous assistance, award, or Allocation Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QELs to investors, pending final determination of whether the entity is in noncompliance or default, and determination of remedies, if applicable, in the sole determination of the CDFI Fund. If the prior award recipient or Allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award notification made under this NOAA.

3. *Default status:* If prior to entering into an Allocation Agreement through this NOAA: (i) The CDFI Fund has made a determination that an Allocatee that is a prior CDFI Fund award recipient or Allocatee under any CDFI Fund program is in default of a previously executed assistance, allocation, or assistance agreement(s); (ii) the CDFI

Fund has provided written notification of such determination to such organization; and (iii) the anticipated date for entering into an Allocation Agreement is within a period of time specified in such notification throughout which any new award, allocation, or assistance is prohibited, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, or to terminate and rescind the Notice of Allocation and the allocation made under this NOAA. Furthermore, if prior to entering into an Allocation Agreement through this NOAA: (i) The CDFI Fund has made a determination that an Affiliate of the Allocatee that is a prior CDFI Fund award recipient or Allocatee under any CDFI Fund program is in default of a previously executed assistance, allocation, or award agreement(s); (ii) the CDFI Fund has provided written notification of such determination to such organization; and (iii) the anticipated date for entering into an Allocation Agreement is within a period of time specified in such notification throughout which any new award, allocation, or assistance is prohibited, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, or to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

B. Allocation Agreement: Each Applicant that is selected to receive a NMTC allocation (including the Applicant's Subsidiary Allocatees) must enter into an Allocation Agreement with the CDFI Fund. The Allocation Agreement will set forth certain required terms and conditions of the NMTC allocation which may include, but are not limited to, the following: (i) The amount of the awarded NMTC allocation; (ii) the approved uses of the awarded NMTC allocation (e.g., loans to or equity investments in Qualified Active Low-Income Businesses, loans to or equity investments in other CDEs); (iii) the approved service area(s) in which the proceeds of QEIs may be used, including the dollar amount of QLICIs that must be invested in Non-Metropolitan counties; (iv) commitments to specific "innovative activities" discussed by the Applicant in its Allocation Application; (v) the time period by which the Applicant may obtain QEIs from investors; (vi) reporting requirements for all Applicants receiving NMTC allocations; and (vii) a requirement to maintain

certification as a CDE throughout the term of the Allocation Agreement. If an Applicant has represented in its NMTC allocation application that it intends to invest substantially all of the proceeds from its investors in businesses in which persons unrelated to the Applicant hold a majority equity interest, the Allocation Agreement will contain a covenant whereby said Applicant agrees that it will invest substantially all of said proceeds in businesses in which persons unrelated to the Applicant hold a majority equity interest.

In addition to entering into an Allocation Agreement, each Applicant selected to receive a NMTC allocation must furnish to the CDFI Fund an opinion from its legal counsel or a similar certification, the content of which will be further specified in the Allocation Agreement, to include, among other matters, an opinion that an Applicant (and its Subsidiary Allocatees, if any): (i) Is duly formed and in good standing in the jurisdiction in which it was formed and the jurisdiction(s) in which it operates; (ii) has the authority to enter into the Allocation Agreement and undertake the activities that are specified therein; (iii) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Allocation Agreement; and (iv) is not in default of its articles of incorporation, bylaws or other organizational documents, or any agreements with the Federal government.

If an Allocatee identifies Subsidiary Allocatees, the CDFI Fund reserves the right to require an Allocatee to provide supporting documentation evidencing that it Controls such entities prior to entering into an Allocation Agreement with the Allocatee and its Subsidiary Allocatees. The CDFI Fund reserves the right, in its sole discretion, to rescind its allocation award if the Allocatee fails to return the Allocation Agreement, signed by the authorized representative of the Allocatee, and/or provide the CDFI Fund with any other requested documentation, including an approved legal opinion, within the deadlines set by the CDFI Fund.

C. Fees: The CDFI Fund reserves the right, in accordance with applicable Federal law and, if authorized, to charge allocation reservation and/or compliance monitoring fees to all entities receiving NMTC allocations. Prior to imposing any such fee, the CDFI Fund will publish additional information concerning the nature and amount of the fee.

D. Reporting: The CDFI Fund will collect information, on at least an annual basis from all Applicants that are awarded NMTC allocations and/or are recipients of QLICIs, including such audited financial statements and opinions of counsel as the CDFI Fund deems necessary or desirable, in its sole discretion. The CDFI Fund will require the Applicant to retain information as the CDFI Fund deems necessary or desirable and shall provide such information to the CDFI Fund when requested to monitor each Allocatee's compliance with the provisions of its Allocation Agreement and to assess the impact of the NMTC Program in Low-Income Communities. The CDFI Fund may also provide such information to the IRS in a manner consistent with IRC § 6103 so that the IRS may determine, among other things, whether the Allocatee has used substantially all of the proceeds of each QEI raised through its NMTC allocation to make QLICIs. The Allocation Agreement shall further describe the Allocatee's reporting requirements.

The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to Allocatees.

VII. Agency Contacts

The CDFI Fund will provide programmatic and information technology support related to the allocation application between the hours of 9:00 a.m. and 5:00 p.m. ET through June 19, 2017. The CDFI Fund will not respond to phone calls or emails concerning the application that are received after 5:00 p.m. ET on June 19, 2017 until after the allocation application deadline of June 21, 2017. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's Web site at <https://www.cdfifund.gov>. The CDFI Fund will post on its Web site responses to questions of general applicability regarding the NMTC Program.

A. Information technology support: Technical support can be obtained by calling (202) 653-0422 or by submitting a Service Request in AMIS. People who have visual or mobility impairments that prevent them from accessing the Low-Income Community maps using the CDFI Fund's Web site should call (202) 653-0422 for assistance. These are not toll free numbers.

B. Programmatic support: If you have any questions about the programmatic requirements of this NOAA, contact the

CDFI Fund's NMTC Program Manager by submitting a Service Request in AMIS; or by telephone at (202) 653-0421. These are not toll-free numbers.

C. Administrative support: If you have any questions regarding the administrative requirements of this NOAA, contact the CDFI Fund's NMTC Program Manager by submitting a Service Request in AMIS, or by telephone at (202) 653-0421. These are not toll free numbers.

D. IRS support: For questions regarding the tax aspects of the NMTC Program, contact Jian Grant and James

Holmes, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 317-4137, or by facsimile at (202) 317-6731. These are not toll free numbers. Applicants wishing formal ruling request should see IRS Internal Revenue Bulletin 2015-1, issued January 2, 2015.

VIII. Information Sessions

In connection with this NOAA, the CDFI Fund may conduct one or more information sessions that will be produced in Washington, DC and broadcast over the internet via

webcasting as well as telephone conference calls. For further information on these upcoming information sessions, please visit the CDFI Fund's Web site at <https://www.cdfifund.gov>.

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D-1.

Mary Ann Donovan,

Director, Community Development Financial Institutions Fund.

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 409 and 488

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities: Revisions to Case-Mix Methodology; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409 and 488

[CMS–1686–ANPRM]

RIN 0938–AT17

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Revisions to Case-Mix Methodology

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Advance notice of proposed rulemaking with comment.

SUMMARY: We are issuing this advance notice of proposed rulemaking (ANPRM) to solicit public comments on potential options we may consider for revising certain aspects of the existing skilled nursing facility (SNF) prospective payment system (PPS) payment methodology to improve its accuracy, based on the results of our SNF Payment Models Research (SNF PMR) project. In particular, we are seeking comments on the possibility of replacing the SNF PPS' existing case-mix classification model, the Resource Utilization Groups, Version 4 (RUG–IV), with a new model, the Resident Classification System, Version I (RCS–I). We also discuss options for how such a change could be implemented, as well as a number of other policy changes we may consider to complement implementation of RCS–I.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 26, 2017.

ADDRESSES: In commenting, please refer to file code CMS–1686–ANPRM. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Within the search bar, enter the Regulation Identifier Number associated with this regulation, 0938–AT17, and then click on the “Comment Now” box.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1686–ANPRM, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1686–ANPRM, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: John Kane, (410) 786–0557.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as

they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

Table of Contents

- I. Executive Summary
 - A. Purpose
 - B. Summary of Major Provisions
- II. Background
 - A. Issues Relating to the Current Case Mix System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program
 - B. Summary of the Skilled Nursing Facility Payment Models Research Project
- III. Potential Revisions to SNF PPS Payment Methodology
 - A. Revisions to SNF PPS Base Federal Payment Rate Components
 1. Background on SNF PPS Federal Base Payment Rates and Components
 2. Data Sources Utilized for Revision of Federal Base Payment Rate Components
 3. Methodology Used for the Calculation of Revised Federal Base Payment Rate Components
 4. Updates and Wage Adjustments of Revised Federal Base Payment Rate Components
 - B. Potential Design and Methodology for Case-Mix Adjustment of Federal Rates
 1. Background on Resident Classification System, Version I
 2. Data Sources Utilized for Developing RCS–I
 - a. Medicare Enrollment Data
 - b. Medicare Claims Data
 - c. Assessment Data
 - d. Facility Data
 3. Resident Classification Under RCS–I
 - a. Background
 - b. Physical and Occupational Therapy Case-Mix Classification
 - c. Speech-Language Pathology Case-Mix Classification
 - d. Nursing Case-Mix Classification
 - e. Non-Therapy Ancillary Case-Mix Classification
 - f. Payment Classifications under RCS–I
 4. Variable Per Diem Adjustment Factors and Payment Schedule
 - C. Use of the Resident Assessment Instrument—Minimum Data Set, Version 3
 1. Potential Revisions to Minimum Data Set (MDS) Completion Schedule
 2. Potential Revisions to Therapy Provision Policies Under the SNF PPS
 3. Interrupted Stay Policy
 - D. Relationship of RCS–I to Existing Skilled Nursing Facility Level of Care Criteria
 - E. Effect of RCS–I on Temporary AIDS Add-on Payment

F. Potential Impacts of Implementing RCS–I
 IV. Collection of Information Requirements
 V. Response to Comments

Acronyms

In addition, because of the many terms to which we refer by acronym in this ANPRM, we are listing these abbreviations and their corresponding terms in alphabetical order below:

AIDS Acquired Immune Deficiency Syndrome
 ARD Assessment reference date
 BBRA Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, Public Law 106–113
 CASPER Certification and Survey Provider Enhanced Reporting
 CCN CMS Certification Number
 CFR Code of Federal Regulations
 CMI Case-mix index
 CMS Centers for Medicare & Medicaid Services
 FR Federal Register
 FY Fiscal year
 ICD–10–CM International Classification of Diseases, 10th Revision, Clinical Modification
 IPPS Inpatient prospective payment system
 IRF Inpatient Rehabilitation Facility
 IRF–PAI Inpatient Rehabilitation Facility Patient Assessment Instrument
 LTCH Long-term care hospital
 MDS Minimum data set
 MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173
 NF Nursing facility
 NTA Non-therapy ancillary
 OASIS Outcome and Assessment Information Set
 OMB Office of Management and Budget
 PAC Post-acute care
 PPS Prospective Payment System
 QIES Quality Improvement and Evaluation System
 QIES ASAP Quality Improvement and Evaluation System Assessment Submission and Processing
 RAI Resident assessment instrument
 RCS–I Resident Classification System, Version I
 RFA Regulatory Flexibility Act, Public Law 96–354
 RIA Regulatory impact analysis
 RUG–III Resource Utilization Groups, Version 3
 RUG–IV Resource Utilization Groups, Version 4
 RUG–53 Refined 53-Group RUG–III Case-Mix Classification System
 SNF Skilled nursing facility
 SNF PMR Skilled Nursing Facility Payment Models Research
 STM Staff time measurement
 STRIVE Staff time and resource intensity verification
 TEP Technical expert panel

I. Executive Summary

A. Purpose

This ANPRM solicits comments on options we may consider for revising

certain aspects of the existing SNF PPS payment methodology, to improve its accuracy, based on the results of the SNF PMR project. In particular, we are seeking comments on the possibility of replacing the SNF PPS' existing case-mix classification model, RUG–IV, with the RCS–I case mix model developed during the SNF PMR project. We also discuss and seek comment on options for how such a change could be implemented, as well as a number of other policy changes we may consider to complement implementation of RCS–I. We would note that we intend to propose case-mix refinements in the FY 2019 SNF PPS proposed rule, and this ANPRM serves to solicit comments on potential revisions we are considering proposing in such rulemaking.

B. Summary of Major Provisions

In section II of this ANPRM, we discuss the current SNF PPS, specifically the RUG–IV case-mix classification methodology that is used to assign SNF Part A residents to payment groups that reflect varying levels of resource intensity. We also discuss issues with the current system which prompted CMS to consider potential revisions to the existing case-mix methodology. Finally, we discuss the SNF PMR project, which was intended to develop a replacement for the RUG–IV case-mix classification model within our current statutory authority.

In section III. of this ANPRM, we discuss the case-mix model that could serve to replace RUG–IV, which is the RCS–I model. We begin by discussing the revised base rate structure that would be used under RCS–I, based on certain changes to the existing SNF PPS case-mix adjusted components that we are considering, based on the findings from the SNF PMR project. Similar to the current system, RUG–IV, the revised model, the RCS–I, would case-mix adjust for the following major cost categories: Physical therapy (PT), occupational therapy (OT), speech-language pathology (SLP) services, nursing services and non-therapy ancillaries (NTAs). However, where RUG–IV consists of two case-mix adjusted components (therapy and nursing), the RCS–I would create four (PT/OT, SLP, nursing, and NTA) for a more resident-centered case-mix adjustment. We then discuss each of the potential case-mix adjusted components under the RCS–I model, including how residents would be classified under each case-mix component and the resident-characteristics that our research indicates could serve as appropriate predictors of varying resource intensity

for each component. Finally, we also discuss and solicit public comments on other potential policy changes, developed under the SMF PMR project, to the SNF PPS payment methodology.

II. Background

A. Issues Relating to the Current Case-Mix System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 1888(e)(4)(G)(i) of the Act requires the Secretary to make an adjustment to the per diem rates to account for case-mix. The statute specifies that the adjustment is to be based on both a resident classification system that the Secretary establishes that accounts for the relative resource use of different resident types, as well as resident assessment and other data that the Secretary considers appropriate.

In general, the case-mix classification system currently used under the SNF PPS classifies residents into payment classification groups, called RUGs, based on various resident characteristics and the type and intensity of therapy services provided to the resident. Each RUG is assigned a set of case-mix indexes (CMIs) that reflect relative differences in cost and resource intensity for each case-mix adjusted component. The higher the CMI, the higher the expected resource utilization and cost associated with that resident's care. Under the existing SNF PPS methodology, there are two case-mix components. The nursing component reflects relative differences in a resident's associated nursing and non-therapy ancillary (NTA) costs, based on various resident characteristics, such as resident comorbidities, and treatments. The therapy component reflects relative differences in a resident's associated therapy costs, which is based on a combination of PT, OT, and SLP services. Resident classification under the existing therapy component is based primarily on the amount of therapy the SNF chooses to provide to a SNF resident. Under the RUG–IV model, residents are classified into rehabilitation groups, where payment is determined primarily based on the intensity of therapy services received by the resident, and into nursing groups, based on the intensity of nursing services received by the resident and other aspects of the resident's care and condition. However, only the higher paying of these groups is used for payment purposes. For example, if a resident is classified into a both the RUA (Rehabilitation) and PA1 (Nursing) RUG–IV groups, where RUA has a higher per-diem payment rate than PA1,

the RUA group is used for payment purposes. It should be noted that the vast majority of Part A covered SNF days (over 90 percent) are paid using a rehabilitation RUG. A variety of concerns have been raised with the current SNF PPS, specifically the RUG-IV model, which we discuss below.

When the SNF PPS was first implemented (63 FR 26252), we developed the RUG-III case-mix classification model, which tied the amount of payment to resident resource use in combination with resident characteristic information. Staff time measurement (STM) studies conducted in 1990, 1995, and 1997 provided information on resource use (time spent by staff members on residents) and resident characteristics that enabled us not only to establish RUG-III, but also to create CMIs. This initial RUG-III model was refined by changes finalized in the FY 2006 SNF PPS final rule (70 FR 45032), which included adding nine case-mix groups to the top of the original 44-group RUG-III hierarchy, which created the RUG-53 case-mix model.

In the FY 2010 SNF PPS proposed rule (74 FR 22208), we proposed a revised RUG-IV model based on, among other reasons, concerns that incentives in the SNF PPS had changed the relative amount of nursing resources required to treat SNF residents (74 FR 22220). These concerns led us to conduct a new Staff Time Measurement (STM) study, the Staff Time and Resource Intensity Verification (STRIVE) project, which served as the basis for developing the current SNF PPS case-mix classification model, RUG-IV, which became effective in FY 2011. At that time, we considered alternative case mix models, including predictive models of therapy payment based on resident characteristics; however, we had a “great deal of concern that by separating payment from the actual provision of services, the system, and more importantly, the beneficiaries would be vulnerable to underutilization.” (74 FR 22220). Other options considered at the time included a non-therapy ancillary (NTA) payment model based on resident characteristics (74 FR 22238) and a DRG-based payment model that relied on information from the prior inpatient stay (74 FR 22220); these and other options are discussed in detail in a CMS Report to Congress issued in December 2006 (available at https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPSP/Downloads/RC_2006_PC-PPSSNF.pdf).

In the years since we implemented the SNF PPS, finalized RUG-IV, and made statements regarding our concerns

about underutilization of services in previously considered models, we have witnessed a significant trend that has caused us to reconsider these concerns. More specifically, as discussed in section V.E. of the FY 2015 SNF PPS proposed rule (79 FR 25767), we documented and discussed trends observed in therapy utilization in a memo entitled “Observations on Therapy Utilization Trends” (which may be accessed at https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPSP/Downloads/Therapy_Trends_Memo_04212014.pdf). The two most notable trends discussed in that memo were that the percentage of residents classifying into the Ultra-High therapy category has increased steadily and, of greater concern, that the percentage of residents receiving just enough therapy to surpass the Ultra-High and Very-High therapy thresholds has also increased. In that memo, we state “the percentage of claims-matched MDS assessments in the range of 720 minutes to 739 minutes, which is just enough to surpass the 720 minute threshold for RU groups, has increased from 5 percent in FY 2005 to 33 percent in FY 2013” and this trend has continued since that time. While it might be possible to attribute the increasing share of residents in the Ultra-High therapy category to increasing acuity within the SNF population, we believe the increase in “thresholding” (that is, of providing just enough therapy for residents to surpass the relevant therapy thresholds) is a strong indication of service provision predicated on financial considerations rather than resident need. We discussed this issue in response to comments in the FY 2015 SNF PPS final rule, where, in response to comments regarding the lack of “current medical evidence related to how much therapy a given resident should receive,” we stated the following:

With regard to the comments which highlight the lack of existing medical evidence for how much therapy a given resident should receive, we would note that . . . the number of therapy minutes provided to SNF residents within certain therapy RUG categories is, in fact, clustered around the minimum thresholds for a given therapy RUG category. However, given the comments highlighting the lack of medical evidence related to the appropriate amount of therapy in a given situation, it is all the more concerning that practice patterns would appear to be as homogenized as the data would suggest. (79 FR 45651)

In response to comments related to factors which may explain the observed trends, we stated the following:

With regard to the comment which highlighted potential explanatory factors for the observed trends, such as internal pressure within SNFs that would override clinical judgment, we find these potential explanatory factors troubling and entirely inconsistent with the intended use of the SNF benefit. Specifically, the minimum therapy minute thresholds for each therapy RUG category are certainly not intended as ceilings or targets for therapy provision. As discussed in Chapter 8, Section 30 of the Medicare Benefit Policy Manual (Pub. 100-02), to be covered, the services provided to a SNF resident must be “reasonable and necessary for the treatment of a patient’s illness or injury, that is, are consistent with the nature and severity of the individual’s illness or injury, *the individual’s particular medical needs*, and accepted standards of medical practice.” (emphasis added) Therefore, services which are not specifically tailored to meet the individualized needs and goals of the resident, based on the resident’s condition and the evaluation and judgment of the resident’s clinicians, may not meet this aspect of the definition for covered SNF care, and we believe that internal provider rules should not seek to circumvent the Medicare statute, regulations and policies, or the professional judgment of clinicians. (79 FR 45651 through 45652)

In addition to this discussion of observed trends, others have also identified potential areas of concern within the current SNF PPS. The two most notable sources are the Office of the Inspector General (OIG) and the Medicare Payment Advisory Commission (MedPAC).

With regard to the OIG, three recent OIG reports describe the OIG’s concerns with the current SNF PPS. In December 2010, the OIG released a report entitled “Questionable Billing by Skilled Nursing Facilities” (which may be accessed at <https://oig.hhs.gov/oei/reports/oei-02-09-00202.pdf>). In this report, among its findings, the OIG found that “from 2006 to 2008, SNFs increasingly billed for higher paying RUGs, even though beneficiary characteristics remained largely unchanged” (OEI-02-09-00202, ii), and among other things, recommended that we should “consider several options to ensure that the amount of therapy paid for by Medicare accurately reflects beneficiaries’ needs” (OEI-02-09-00202, iii). Further, in November 2012, the OIG released a report entitled “Inappropriate Payments to Skilled Nursing Facilities Cost Medicare More Than a Billion Dollars in 2009” (which may be accessed at <https://oig.hhs.gov/oei/reports/oei-02-09-00200.pdf>). In this report, the OIG found that “SNFs billed one-quarter of all claims in error in 2009” and that the “majority of the claims in error were upcoded; many of these claims were for ultrahigh

therapy.” (OEI-02-09-00200, Executive Summary). Among its recommendations, the OIG stated that “the findings of this report provide further evidence that CMS needs to change how it pays for therapy” (OEI-02-09-00200, 15). Finally, in September 2015, the OIG released a report entitled “The Medicare Payment System for Skilled Nursing Facilities Needs to be Reevaluated” (which may be accessed at <https://oig.hhs.gov/oei/reports/oei-02-13-00610.pdf>). Among its findings, the OIG found that “Medicare payments for therapy greatly exceed SNFs’ costs for therapy,” further noting that “the difference between Medicare payments and SNFs’ costs for therapy, combined with the current payment method, creates an incentive for SNFs to bill for higher levels of therapy than necessary” (OEI-02-13-00610, 7). Among its recommendations, the OIG stated that CMS should “change the method of paying for therapy,” further stating that “CMS should accelerate its efforts to develop and implement a new method of paying for therapy that relies on beneficiary characteristics or care needs.” (OEI-02-13-00610, 12).

With regard to MedPAC’s recommendations in this area, Chapter 8 of MedPAC’s March 2017 Report to Congress (available at http://www.medpac.gov/docs/default-source/reports/mar17_medpac_ch8.pdf) includes the following recommendation: “The Congress should . . . direct the Secretary to revise the prospective payment system (PPS) for skilled nursing facilities” and “. . . make any additional adjustments to payments needed to more closely align payment with costs.” (March 2017 MedPAC Report to Congress, 220). This recommendation is seemingly predicated on MedPAC’s own analysis of the current SNF PPS, where they state that “almost since its inception the SNF PPS has been criticized for encouraging the provision of excessive rehabilitation therapy services and not accurately targeting payments for nontherapy ancillaries” (March 2017 MedPAC Report to Congress, 202). Finally, with regard to the possibility of changing the existing SNF payment system, MedPAC stated that “since 2015, [CMS] has gathered four expert panels to receive input on aspects of possible design features before it proposes a revised PPS” and further that “the designs under consideration are consistent with those recommended by the Commission” (March 2017 MedPAC Report to Congress, 203).

The combination of the observed trends in the current SNF PPS discussed above (which strongly suggest that

providers may be basing service provision on financial reasons rather than resident need), the issues raised in the OIG reports discussed above, and the issues raised by MedPAC, has caused us to consider significant revisions to the existing SNF PPS, in keeping with our overall responsibility to ensure that payments under the SNF PPS accurately reflect both resident needs and resource utilization.

Under the RUG-IV system, therapy service provision determines not only therapy payments, but also nursing payments. This is because, as noted above, only one of a resident’s assigned RUG groups, rehabilitation or nursing, is used for payment purposes. Each rehabilitation group is assigned a nursing CMI to reflect relative differences in nursing costs for residents in those rehabilitation groups, which is less specifically tailored to the individual nursing costs for a given resident than the nursing CMIs assigned for the nursing RUGs. Given that, as mentioned above, most resident days are paid using a rehabilitation RUG, and since assignment into a rehabilitation RUG is based on therapy service provision, this means that therapy service provision effectively determines nursing payments for those residents who are assigned to a rehabilitation RUG. Thus, we believe any attempts to revise the SNF PPS payment methodology to better account for therapy service provision under the SNF PPS would need to be comprehensive and affect both the therapy and nursing case-mix components. Moreover, in the FY 2015 SNF PPS final rule, in response to comments regarding access for certain “specialty” populations (such as those with complex nursing needs), we stated the following:

With regard to the comment on specialty populations, we agree with the commenter that access must be preserved for all categories of SNF residents, particularly those with complex medical and nursing needs. As appropriate, we will examine our current monitoring efforts to identify any revisions which may be necessary to account appropriately for these populations. (79 FR 45651)

In addition, MedPAC, in their March 2017 Report to Congress, stated that they have previously recommended that we revise the current SNF PPS to “base therapy payments on patient characteristics (not service provision), remove payments for NTA services from the nursing component, [and] establish a separate component within the PPS that adjusts payments for NTA services” (March 2017 MedPAC Report to Congress, 202). Accordingly, we note that included among the potential

revisions we discuss in this ANPRM, are revisions to the SNF PPS to address longstanding concerns regarding the ability of the RUG-IV system to account for variation in nursing and NTA services, as described in sections III.D.3.d and III.D.3.e. of this ANPRM.

In the sections that follow, we solicit comments on comprehensive revisions to the current SNF PPS case-mix classification system. Specifically, we discuss a potential alternative to the existing RUG-IV, called RCS-I, which we are considering. We solicit comment on the extent to which RCS-I addresses the issues we outline above. As further discussed below, we believe that the RCS-I model represents an improvement over the RUG-IV model because it would better account for resident characteristics and care needs, thus better aligning SNF PPS payments with resource use and eliminating therapy provision-related financial incentives inherent in the current payment model used in the SNF PPS. To better ensure that resident care decisions appropriately reflect each resident’s actual care needs, we believe it is important to remove, to the extent possible, service-based metrics from the SNF PPS and derive payment from objective resident characteristics.

B. Summary of the Skilled Nursing Facility Payment Models Research Project

As noted above, since 1998, Medicare Part A has paid for SNF services on a per diem basis through the SNF PPS. Currently, therapy payments under the SNF PPS are based primarily on the amount of therapy furnished to a patient, regardless of that patient’s specific characteristics and care needs. Beginning in 2013, we contracted with Acumen, LLC to identify potential alternatives to the existing methodology used to pay for services under the SNF PPS. The recommendations developed under this contract, entitled the SNF PMR project, form the basis of the ideas contained in the sections below.

The SNF PMR operated in three phases. In the first phase of the project, which focused exclusively on therapy payment issues, Acumen reviewed past research studies and policy issues related to SNF PPS therapy payment and options for improving or replacing the current therapy payment methodology. After consideration of multiple potential alternatives, such as competitive bidding and a hybrid model combining resource-based pricing (for example, how therapy payments are made under the current SNF PPS) with resident characteristics, we identified a model that relies on resident

characteristics rather than the amount of therapy received as the most appropriate replacement for the existing therapy payment model. As stated above, we believe that relying on resident characteristics would improve the resident-centeredness of the model and discourage resident care decisions predicated on service-based financial incentives. A report summarizing Acumen's activities and recommendations during the first phase of the SNF PMR contract, the SNF Therapy Payment Models Base Year Final Summary Report, is available at https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Summary_Report_20140501.pdf.

In the second phase of the project, Acumen used the findings from the Base Year Final Summary Report as a guide to identify potential models suitable for further analysis. During this phase of the project, in an effort to establish a comprehensive approach to Medicare Part A SNF payment reform, we expanded the scope of the SNF PMR to encompass other aspects of the SNF PPS beyond therapy. Although we always intended to ensure that any revisions specific to therapy payment would be considered as part of an integrated approach with the remaining payment methodology, we felt it prudent to examine potential improvements and refinements to the overall SNF PPS payment system as well.

During this phase of the SNF PMR, Acumen hosted four Technical Expert Panels (TEPs), which brought together industry experts, stakeholders, and clinicians with the research team to discuss different topics within the overall analytic framework. In February 2015, Acumen hosted a TEP to discuss questions and issues related to therapy case-mix classification. In November 2015, Acumen hosted a second TEP focused on questions and issues related to nursing case-mix classification, as well as to discuss issues related to payment for NTAs. In June 2016, Acumen hosted a third TEP to provide stakeholders with an outline of a potential revised SNF PPS payment structure, including new case-mix adjusted components and potential companion policies, such as variable per diem payment adjustments. Finally, in October 2016, Acumen hosted a fourth TEP, during which Acumen presented the case-mix components for a potential revised SNF PPS, as well as an initial impact analysis associated with the potential revised SNF PPS payment model. The presentation slides used during each of the TEPs, as well as a summary report for each TEP, is

available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>.

In the final phase of the contract, which is ongoing, we tasked Acumen to assist in developing supporting language and documentation, most notably a technical report, related to the alternative SNF PPS case-mix classification model we are considering, which we have named the RCS-I.

This ANPRM solicits comments on the issues with the current SNF PPS, and what steps should be taken to refine the existing SNF PPS in response to those issues. In particular, in this ANPRM, we discuss and are soliciting comments regarding how we could replace the existing RUG-IV case-mix classification model with a potential alternative such as the RCS-I case-mix classification model. We solicit comments on the adequacy and appropriateness of the RCS-I case-mix model to serve as a replacement for the RUG-IV model. Our goals in developing a potential alternative are as follows:

- To create a model that compensates SNFs accurately based on the complexity of the particular beneficiaries they serve and the resources necessary in caring for those beneficiaries; and
- To address our concerns, along with those of OIG and MedPAC, about current incentives for SNFs to deliver therapy to beneficiaries based on financial considerations, rather than the most effective course of treatment for beneficiaries; and
- To maintain simplicity by, to the extent possible, limiting the number and type of elements we use to determine case-mix, as well as limiting the number of assessments necessary under the payment system.

We solicit comment on the goals outlined above and how effective the RCS-I system we outline below is at addressing those goals.

In addition to the general discussion of RCS-I, we also discuss and are soliciting public comment on certain complementary policies that we believe could also serve to improve the SNF PPS. To provide commenters with an appropriate basis for comment on RCS-I, we also discuss the potential impact to providers of implementing this type of model. We also solicit public comment on certain logistical aspects of implementing revisions to the current SNF PPS, such as whether those revisions should be implemented in a budget neutral manner, and how much lead time providers and other stakeholders should receive before any finalized changes would be

implemented. Finally, we are soliciting public comment on other potential issues CMS should consider in implementing revisions to the current SNF PPS, such as potential effects on state Medicaid programs, potential behavioral changes, and the type of education and training that would be necessary to implement successfully any changes to the SNF PPS.

In the sections below, we outline each aspect of the RCS-I case-mix classification model we are considering, as well as additional revisions to the SNF PPS which may be considered along with potential implementation of the RCS-I classification model. We invite comments on any and all aspects of the RCS-I case-mix model, including the research analyses described in this ANPRM and in the SNF PMR Technical Report (available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>), as well as on any of the other considerations discussed in this ANPRM.

III. Potential Revisions to SNF PPS Payment Methodology

A. Revisions to SNF PPS Federal Base Payment Rate Components

1. Background on SNF PPS Federal Base Payment Rates and Components

Section 1888(e)(4) of the Act requires that the SNF PPS per diem federal payment rates be based on FY 1995 costs, updated for inflation. These base rates are then required to be adjusted to reflect differences in patient case-mix. In keeping with this statutory requirement, the base per diem payment rates were set in 1998 and reflect average SNF costs in a base year (FY 1995), updated for inflation to the first period of the SNF PPS, which was the 15-month period beginning on July 1, 1998. The federal base payment rates were calculated separately for urban and rural facilities and based on allowable costs from the FY 1995 cost reports of hospital-based and freestanding SNFs, where allowable costs included all routine, ancillary, and capital-related costs (excluding those related to approved educational activities) associated with SNF services provided under Part A, and all services and items for which payment could be made under Part B prior to July 1, 1998.

In general, routine costs are those included by SNFs in a daily service charge and include regular room, dietary, and nursing services, medical social services and psychiatric social services, as well as the use of certain facilities and equipment for which a separate charge is not made. Ancillary

costs are directly identifiable to residents and cover specialized services, including therapy, drugs, and laboratory services. Lastly, capital-related costs include the costs of land, building, and equipment and the interest incurred in financing the acquisition of such items. (63 FR 26253)

There are four federal base payment rate components which may factor into SNF PPS payment. Two of these components, “nursing case-mix” and “therapy case-mix,” are case-mix adjusted components, while the remaining two components, “therapy non-case-mix” and “non-case-mix,” are not case-mix adjusted. While we discuss the details of the RCS–I payment model and justifications for certain associated policies we are considering in section III.D. of this ANPRM, we note that, as part of the RCS–I case-mix model under consideration, we would bifurcate both the “nursing case-mix” and “therapy case-mix” components of the federal base payment rate into two components each, thereby creating four case-mix adjusted components. More specifically, we would separate the “therapy case-mix” rate component into a “Physical Therapy/Occupational Therapy” (PT/OT) component and a “Speech-Language Pathology” (SLP) component. Our rationale for bifurcating the therapy case-mix component in this manner is presented in section III.D.3.b. of this ANPRM. Based on the results of the SNF PMR, we would also separate the “nursing case-mix” rate component into a “nursing” component and a “Non-Therapy Ancillary” (NTA) component. Our rationale for bifurcating the nursing case-mix component in this manner is presented in section III.D.3.e. of this ANPRM. Given that all SNF residents, under the RCS–I model, would be assigned to a classification group for each of the two therapy-related case-mix adjusted components as further discussed below, we believe that we could eliminate the “therapy non-case-mix” rate component under the RCS–I model. The existing non-case-mix component could be maintained as it is currently constituted under the existing SNF PPS. Although the case-mix components of the RCS–I case-mix classification system would address costs associated with individual resident care based on an individual’s specific needs and characteristics, the non-case-mix component addresses consistent costs that are incurred for all residents, such as room and board and various capital-related expenses. As these costs are not likely to change, regardless of what changes we might make to the SNF PPS, we believe it

would be appropriate to continue using the non-case-mix component as it is currently used.

In the next section, we discuss the methodology we used to bifurcate the federal base payment rates for each of the two existing case-mix adjusted components, as well as the data sources used in this calculation. The methodology does not calculate new federal base payment rates, but simply splits the existing base rate case-mix components for therapy and nursing. The methodology and data used in this calculation are based on the data and methodology used in the calculation of the original federal payment rates in 1998, as further discussed below.

2. Data Sources Utilized for Revision of Federal Base Payment Rate Components

Section II.A.2. of the interim final rule with comment period that initially implemented the SNF PPS (63 FR 26256 through 26260) provides a detailed discussion of the data sources used to calculate the original federal base payment rates in 1998. We are considering using the same data sources to determine the portion of the therapy case-mix component base rate that would be assigned to the SLP component base rate. As described in section III.C.3. of this ANPRM, the methodology for bifurcating the nursing component base rate is different than the methodology used for bifurcating the therapy component base rate, despite using the same data sources. The portion of the nursing component base rate that corresponds to NTA costs was already calculated using the same data source used to calculate the federal base payment rates in 1998. As explained below, we used the previously calculated percentage of the nursing component base rate corresponding to NTA costs to set the NTA base rate, and verified this calculation with the analysis described in section III.C.3 of this ANPRM. Therefore, the steps described below address the calculations performed to bifurcate the therapy base rate alone.

The percentage of the current therapy case-mix component of the federal base payment rates that would be assigned to the SLP component of the federal base payment rates was determined using cost information from FY 1995 cost reports, after making the following exclusions and adjustments: First, only settled and as-submitted cost reports for hospital-based and freestanding SNFs for periods beginning in FY 1995 and spanning 10 to 13 months were included. This set of restrictions replicates the restrictions used to derive the original federal base payment rates

as set forth in the 1998 interim final rule with comment period (63 FR 26256). Following the methodology used to derive the SNF PPS base rates, routine and ancillary costs from “as submitted” cost reports were adjusted down by 1.31 and 3.26 percent, respectively. As discussed in the 1998 interim final rule with comment period, the specific adjustment factors were chosen to reflect average adjustments resulting from cost report settlement and were based on a comparison of as-submitted and settled reports from FY 1992 to FY 1994 (63 FR 26256); these adjustments are in accordance with section 1888(e)(4)(A)(i) of the Act. We used similar data, exclusions, and adjustments as in the original base rates calculation so the resulting base rates for the components would resemble as closely as possible what they would have been had they been established in 1998. However, there were two ways in which the SLP percentage calculation deviates from the 1998 base rates calculation. First, the 1998 calculation of the base rates excluded reports for facilities exempted from cost limits in the base year. The available data do not identify which facilities were exempted from cost limits in the base year, so this restriction was not implemented. We do not believe this had a notable impact on our estimate of the SLP percentage, because only a small fraction of facilities were exempted from cost limits. Consistent with the 1998 base rates calculation, we excluded facilities with per diem costs more than three standard deviations higher than the geometric mean across facilities. Therefore, facilities with unusually high costs did not influence our estimate. Second, the 1998 calculation of the base rates excluded costs related to exceptions payments and costs related to approved educational activities. The available cost report data did not identify costs related to exceptions payments nor indicate what percentage of overall therapy costs or costs by therapy discipline were related to approved educational activities, so these costs are not excluded from the SLP percentage calculation. Because exceptions were only granted for routine costs, we believe the inability to exclude these costs should not affect our estimate of the SLP percentage (as exceptions would not apply to therapy costs). Additionally, the data indicate that educational costs made up less than one-hundredth of 1 percent of overall SNF costs. If the proportion of educational costs is relatively uniform across cost categories, the inability to

exclude these costs should have a negligible impact on our estimate.

In addition to Part A costs from the cost report data, the 1998 federal base rates calculation incorporated estimates of amounts payable under Part B for covered SNF services provided to Part A SNF residents, as required by section 1888(e)(4)(A)(ii) of the Act. In calculating the SLP percentage, we also estimated the amounts payable under Part B for covered SNF services provided to Part A residents. All Part B claims associated with Part A SNF claims overlapping with FY 1995 cost reports were matched to the corresponding facility's cost report. For each cost center (for example, SLP, PT, OT) in each cost report, a ratio was calculated to determine the amount by which Part A costs needed to be increased to account for the portion of costs payable under Part B. This ratio for each cost center was determined by dividing the total charges from the matched Part B claims by the total charges from the Part A SNF claims overlapping with the cost report.

Finally, the 1998 federal base rates calculation standardized the cost data for each facility to control for the effects of case-mix and geographic-related wage differences, as required by section 1888(e)(4)(C) of the Act. When calculating the SLP share of the current therapy base rate, we replicated the method used in 1998 to standardize for wage differences, as described in the 1998 interim final rule with comment period (63 FR 26259 through 26260). We applied a hospital wage index to the labor-related share of costs, estimated at 75.888 percent, and used an index composed of hospital wages from FY 1994. The SLP percentage calculation did not include the case-mix adjustment used in the 1998 calculation because the 1998 adjustment relied on the obsolete RUG-III classification system. In the 1998 federal base rates calculation, information from SNF and inpatient claims was mapped to RUG-III clinical categories at the resident level to case-mix adjust facility per diem costs. However, the 1998 interim final rule did not document this mapping, and the data used as the basis for this adjustment are no longer available, and therefore this step could not be replicated. Because the case-mix adjustment was applied at the facility level, the inability to replicate this step should not impact our estimate of the SLP percentage, as we expect the case-mix adjustment would affect the estimates of SLP and total therapy per diem costs to the same degree.

3. Methodology Used for the Calculation of Revised Federal Base Payment Rate Components

As discussed above, we are considering separating the current therapy components into a PT/OT component and an SLP component. To do this, we considered calculating the percentage of the current therapy component of the federal base rate that corresponds to each of the two RCS-I components (PT/OT and SLP) in accordance with the methodology set forth below.

The data described in section III.C.2. of this ANPRM provides cost estimates for the Medicare Part A SNF population for each cost report that met the inclusion criteria. Cost reports stratify costs by a number of cost centers that indicate different types of services. For instance, costs are reported separately for each of the three therapy disciplines (PT, OT, and SLP). Cost reports also include the number of Medicare Part A utilization days during the cost reporting period. This allows us to calculate both average SLP costs per day and average therapy costs per day in the facility during the cost reporting period. Therapy costs are defined as the sum of costs for the three therapy disciplines.

The goal of this methodology is to estimate the fraction of therapy costs that corresponds to SLP costs. We use the facility-level averages developed from cost reports to derive a federal average for both therapy costs and SLP costs. To do this, we followed the methodology outlined in section II.A.3 of the 1998 interim final rule with comment period (63 FR 26260), which was used by CMS (then known as HCFA) to create the federal base payment rates:

(1) For each of the two measures of cost (SLP costs per day and total therapy costs per day), we computed the mean based on data from freestanding SNFs only. This mean was weighted by the total number of Medicare days of the facility.

(2) For each of the two measures of cost (SLP costs per day and total therapy costs per day), we computed the mean based on data from both hospital-based and freestanding SNFs. This mean was weighted by the total number of Medicare days of the facility.

(3) For each of the two measures of cost (SLP costs per day and total therapy costs per day), we calculated the arithmetic mean of the amounts determined under steps (1) and (2) above.

In section 3.11.3 of the SNF PMR Technical Report (available at <https://www.cms.gov/Medicare/Medicare-Fee->

[for-Service-Payment/SNFPPS/therapyresearch.html](https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html)), we show the results of each of these calculations.

The three steps outlined above produce a measure of SLP costs per day and a measure of therapy costs per day. We divided the SLP cost measure by the therapy cost measure to obtain the percentage of the therapy component that corresponds to SLP costs. We believe that following a methodology to derive the SLP percentage that is consistent with the methodology used to determine the base rates in the 1998 interim final rule with comment period is appropriate because a consistent methodology helps to ensure that the resulting base rates for the components resemble what they would be had they been established in 1998 and that the methodology is as consistent as possible with the relevant statutory requirements, as discussed in section III.A.1 above. We found that 16 percent of the therapy component of the base rate for urban SNFs and 18 percent of the therapy component of the base rate for rural SNFs correspond to SLP costs. Under the RCS-I model we are considering, the current therapy case-mix component would be separated into a Physical Therapy/Occupational Therapy component and a Speech-Language Pathology component using the percentages derived above. This process is done separately for urban and for rural facilities. In section 3.11.3 of the SNF PMR Technical Report (available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>), we provide the specific cost centers used to identify SLP costs and total therapy costs.

In addition, we are considering separating the current nursing case-mix component into a nursing case-mix component and an NTA component. Similar to the therapy component, we are considering calculating the percentage of the current nursing component of the federal base rates that corresponds to each of the two RCS-I components (NTA and nursing). The 1998 reopening of the comment period for the interim final rule (63 FR 65561, November 27, 1998) states that NTA costs comprise 43.4 percent of the current nursing component of the urban federal base rate, and the remaining 56.6 percent accounts for nursing and social services salary costs. These percentages for the nursing component of the federal base rate for rural facilities are 42.7 percent and 57.3 percent, respectively (63 FR 65561). Therefore, we are considering assigning 43 percent of the current nursing component of the federal base rates to the new NTA

component of the federal base rate, and to assign the remaining 57 percent to the new nursing component of the federal base rate.

We verified the 1998 calculation of the percentages of the nursing component federal base rates that correspond to NTA costs by developing a measure of NTA costs per day for urban and rural facilities. We used the same data and followed the same methodology described above to develop measures of SLP costs per day and total therapy costs per day. The measure of NTA costs per day produced by this analysis is \$47.70 for urban facilities and \$47.30 for rural facilities. The original 1998 federal base rates for

the nursing component, which relied on a similar methodology, were \$109.48 for urban facilities and \$104.88 for rural facilities. Therefore, our measure of NTA costs in urban facilities was equivalent to 43.6 percent of the urban 1998 federal nursing base rate, and our measure of NTA costs in rural facilities was equivalent to 45.1 percent of the rural 1998 federal nursing base rate. These results are similar to the estimates published in the 1998 reopening of the comment period for the interim final rule (63 FR 65561, November 27, 1998), which we believe supports the validity of the 43 percent figure stated above.

For illustration purposes, Tables 1 and 2 set forth what the unadjusted

federal per diem rates would be for each of the case-mix adjusted components if we were to apply the RCS-I case-mix classification model to the proposed FY 2018 base rates (as set forth in the FY 2018 SNF PPS proposed rule. These are derived by dividing the proposed FY 2018 SNF PPS base rates according to the percentages described above. Tables 1 and 2 also show what the unadjusted federal per diem rates for the non-case-mix component would be, which are not affected by the change in case-mix methodology from the RUG-IV to the RCS-I. We use these unadjusted federal per diem rates in calculating the impact analysis discussed in section III.H. of this ANPRM.

TABLE 1—RCS-I UNADJUSTED FEDERAL RATE PER DIEM—URBAN

Rate component	Nursing	NTA	PT/OT	SLP	Non-case-mix
Per Diem Amount	\$100.91	\$76.12	\$126.76	\$24.14	\$90.35

TABLE 2—RCS-I UNADJUSTED FEDERAL RATE PER DIEM—RURAL

Rate component	Nursing	NTA	PT/OT	SLP	Non-case-mix
Per Diem Amount	\$96.40	\$72.72	\$141.47	\$31.06	\$92.02

We invite comments on the data sources and methodology we are considering for calculating the unadjusted federal per diem rates and components that would be used in conjunction with the RCS-I case-mix classification model.

4. Updates and Wage Adjustments of Revised Federal Base Payment Rate Components

In section III.B. of the FY 2017 SNF PPS final rule (81 FR 51972), we describe the process used to update the federal per diem rates each year. Additionally, as discussed in section III.B.4 of the FY 2017 SNF PPS final rule (81 FR 51978), SNF PPS rates are adjusted for geographic differences in wages using the most recent hospital wage index. Under the RCS-I case-mix model we are considering, we would continue to update the federal base payment rates and adjust for geographic differences in wages following the current methodology used for such updates and wage index adjustments under the SNF PPS. Specifically, under the RCS-I case-mix model, we would continue the practice of using the SNF market basket, adjusted as described in section III.B. of the FY 2017 SNF PPS final rule, and of adjusting for geographic differences in wages as described in section III.B.4 of the FY

2017 SNF PPS final rule. We invite comments on these ideas.

B. Potential Design and Methodology for Case-Mix Adjustment of Federal Rates

1. Background on Resident Classification System, Version I

Section 1888(e)(4)(G)(i) of the Act requires that the Secretary provide for an appropriate adjustment to account for case mix and that such an adjustment shall be based on a resident classification system that accounts for the relative resource utilization of different patient types. The current case-mix classification system uses a combination of resident characteristics and service intensity metrics (for example, therapy minutes) to assign residents to one of 66 RUGs, each of which has a set of CMIs indicative of the relative cost to a SNF of treating residents within that classification category. However, as noted in section III.A. of this ANPRM, incorporating service-based metrics into the payment system can incentivize the provision of services based on a facility's financial considerations rather than resident needs. To better ensure that resident care decisions appropriately reflect each resident's actual care needs, we believe it is important to remove, to the extent possible, service-based metrics from the SNF PPS and derive payment from objective resident characteristics that

are resident, and not facility, centered. To that end, RCS-I was developed to be a payment model which derives almost exclusively from verifiable resident characteristics.

Additionally, the current RUG-IV case-mix classification system reduces the varied needs and characteristics of a resident into a single RUG-IV group that is used for payment. As of FY 2016, of the 66 possible RUG classifications, over 90 percent of covered SNF PPS days are billed using one of the 23 Rehabilitation RUGs, with over 60 percent of covered SNF PPS days billed using one of the three Ultra-High Rehabilitation RUGs. The implication of this pattern is that more than half of the days billed under the SNF PPS effectively utilize only a resident's therapy minutes and Activities of Daily Living (ADL) score to determine the appropriate payment for all aspects of a resident's care. Both of these metrics, more notably a resident's therapy minutes, may derive not so much from the resident's own characteristics, but rather, from the type and amount of care the SNF decides to provide to the resident. Even assuming that the facility takes the resident's needs and unique characteristics into account in making these service decisions, the focus of payment remains centered, to a potentially great extent, on the facility's

own decision making and not on the resident's needs.

While the RUG-IV model utilizes a host of service-based metrics (type and amount of care the SNF decides to provide) to classify the resident into a single RUG-IV group, the RCS-I model under consideration would separately identify and adjust for the varied needs and characteristics of a resident's care and then combine them together. We believe that the RCS-I classification model could improve the SNF PPS by basing payments predominantly on clinical characteristics rather than service provision, thereby enhancing payment accuracy and strengthening incentives for appropriate care.

2. Data Sources Utilized for Developing RCS-I

To understand, research, and analyze the costs of providing Part A services to SNF residents, Acumen utilized a variety of data sources in the course of their research. In this section, we discuss these sources and how they were used in the SNF PMR in developing the RCS-I case-mix classification model. A more thorough discussion of the data sources used during the SNF PMR is available in section 3.1 of the SNF PMR Technical Report (available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFFPS/therapyresearch.html>).

a. Medicare Enrollment Data

Beneficiary enrollment and demographic information was pulled from the CMS enrollment database (EDB) and Common Medicare Environment (CME). Beneficiaries' Medicare enrollment was used to apply restrictions to create a study population for analysis. For example, beneficiaries were required to have continuous Medicare Part A enrollment during a stay. Demographic characteristics (for example, age) were incorporated as being predictive of resource use. Furthermore, enrollment and demographic information from these data sources were used to assess the impact of the RCS-I model under consideration on subpopulations of interest. In particular, the EDB and CME include indicators for potentially vulnerable subpopulations, such as those dually-enrolled in Medicaid.

b. Medicare Claims Data

Medicare Parts A and B claims from the CMS Common Working Files (CWF) and Prescription Drug Event (PDE) claims from the PDE database were used to conduct claims analyses as part of the SNF PMR. The claims data analyzed

derived from SNF claims. SNF claims (CMS-1450 form, OMB control number 0938-0997), including type of bill (TOB) 21x (SNF Inpatient Part A) and 18x (hospital swing bed), were used to identify Medicare Part A stays paid under the SNF PPS. Part A stays were constructed by linking claims that share the same beneficiary identifier, facility CMS Certification Number (CCN), and admission date. Information from the claims, such as RUGs, diagnoses, and assessment dates, were aggregated across a stay. Stays created from SNF claims were linked to other claims data and assessment data via beneficiary identifiers.

Acute care hospital stays that qualified the beneficiary for the SNF benefit were identified using Medicare inpatient hospital claims. More specifically, the dates of the qualifying hospital stay listed in the span codes of the SNF claim were used, connecting inpatient claims with those dates listed as the admission and discharge dates. Although there are exceptions, the claims from the preceding inpatient hospitalization commonly contain clinical and service information relevant to the care administered during a SNF stay. Components of this information were used in the regression models predicting therapy and NTA costs or to better understand patterns of post-acute care referrals for patients requiring SNF services. Additionally, the most recent hospital stay was matched to the SNF stay, which often (though not always) was the same as the preceding inpatient hospitalization, and used in the regression models.

Other Medicare claims, including outpatient hospital, physician, home health, hospice, durable medical equipment, and drug prescriptions, were incorporated, as necessary, into the analysis in one of three ways: (i) To verify information found on assessment and SNF or inpatient claims data; (ii) to provide additional resident characteristics to test outside of those found in assessment and SNF and inpatient claims data; and (iii) to stratify modeling results to identify effects of the system on beneficiary subpopulations. These claims were linked to SNF claims using beneficiary identifiers.

c. Assessment Data

MDS assessments were the primary source of resident characteristics used to explain service use and payment in the SNF setting. Acumen's data repositories include MDS assessments submitted by SNFs and swing-bed hospitals. MDS version 2.0 assessments were submitted until October 2010, at which point MDS

version 3.0 assessments began. MDS data were extracted from the Quality Improvement Evaluation System (QIES). MDS assessments were then matched to SNF claims data using the beneficiary identifier, assessment indicator, assessment date, and Resource Utilization Group (RUG).

The SNF PMR also used assessment data not available in the SNF setting. Data from the IRF Patient Assessment Instrument (IRF-PAI) and Outcome and Assessment Information Set (OASIS) were used to identify characteristics that are predictive of service use and costs in the IRF and home health settings, to consider potential similarities with service use in the SNF setting. IRF-PAI and OASIS include assessments for all Medicare IRF and home health patients, regardless of fee-for-service or Medicare Advantage enrollment. While the care furnished in the IRF and home health settings may differ from that furnished in a SNF, there are similarities in the patient populations across PAC settings. IRF-PAI and OASIS data were used for exploratory analyses but were not used to develop RCS-I payment components.

d. Facility Data

Facility characteristics, while not considered as explanatory variables when modeling service use, were used for impact analyses. By incorporating this facility-level information, we could identify any disproportionate effects of the new case-mix classification system on different types of facilities.

Facility-level characteristics were taken from the Certification and Survey Provider Enhanced Reports (CASPER). From CASPER, we draw facility-level characteristics such as ownership, chain affiliation, facility size, and staffing levels. CASPER data were supplemented with information from publicly available data sources. The principal data sources that are publicly available include the Medicare Cost Reports (Form 2540-10, 2540-96, and 2540-92) extracted from the Healthcare Cost Report Information System (HCRIS) files, Provider-Specific Files (PSF), Provider of Service files (POS), and Nursing Home Compare (NHC). These data sources have information on facility costs and payment and characteristics that directly affect PPS calculations.

3. Resident Classification Under RCS-I

a. Background

As noted above, section 1888(e)(4)(G)(i) of the Act requires that the Secretary provide for an appropriate adjustment to account for case mix and that such an adjustment shall be based

on a resident classification system that accounts for the relative resource utilization of different patient types. RCS-I was developed to be a model of payment which derives almost exclusively from resident characteristics. More specifically, the RCS-I model under consideration separately identifies and adjusts four different case-mix components for the varied needs and characteristics of a resident's care and then combines these together with the non-case-mix component to form the full SNF PPS per diem rate for that resident.

As with any case-mix classification system, the predictors that were found to be part of case-mix classification under RCS-I are those which our analysis associated with variation in the costs for the given case-mix component. The federal per diem rates discussed above serve as "base rates" specifically because they set the basic average cost of treating a typical SNF resident. Based on the presence of certain needs or characteristics, caring for certain residents may cost more or less than that average cost. A case-mix system identifies certain aspects of a resident or of a resident's care which, when present, lead to average costs for that group being higher or lower than the average cost of treating a typical SNF resident. For example, if we found that therapy costs were the same for two residents regardless of having a particular condition, then that condition would not be relevant in predicting increases in therapy costs. If, however, we found that, holding all else constant, the presence of a given condition was correlated with an increase in therapy costs for residents with that condition over those without that condition, then this could mean that this condition is indicative, or predictive, of increased costs relative to the average cost of treating SNF residents generally.

In the subsections that follow, we describe each of the four case-mix adjusted components under the RCS-I classification model we are considering, and the basis for each of the predictors that would be used within the RCS-I model to classify residents for payment purposes. In the final subsection under this section of the ANPRM, we outline two hypothetical payment scenarios utilizing the same set of resident characteristics, one using the existing RUG-IV classification model and one using the RCS-I classification model, to demonstrate the increased flexibility and resident-focused approach of the RCS-I model.

b. Physical and Occupational Therapy Case-Mix Classification

A fundamental aspect of the RCS-I case-mix classification model is to use resident characteristics to predict the costs of furnishing similarly situated residents with SNF care. Costs derived from the charges on claims and CCRs on facility cost reports were used as the measure of resource use to develop the RCS-I system. Costs better reflect differences in the relative resource use of residents as opposed to charges, which partly reflect decisions made by providers about how much to charge payers for certain services. Costs derived from charges are reflective of therapy utilization as they are correlated to therapy minutes recorded for each therapy discipline. Under the current RUG-IV case-mix model, therapy minutes for all three therapy disciplines (physical therapy (PT), occupational therapy (OT), and speech-language pathology (SLP)) are added together to determine the appropriate case-mix classification for the resident. However, when we began to investigate resident characteristics predictive of therapy costs for each therapy discipline, summary statistics revealed that there exists little correlation between PT and OT costs per day with SLP costs per day (correlation coefficient of 0.04). The set of resident characteristics from the MDS that predicted PT and OT utilization was different than the set of characteristics predicting SLP utilization. Additionally, many predictors of high PT and OT costs per day predicted lower SLP costs per day, and vice versa. For example, residents with cognitive impairments receive less physical and occupational therapy but receive more speech-language pathology. As a result of this analysis, we found that isolating predictors of total therapy costs per day obscured differences in the determinants of PT/OT and SLP utilization.

In contrast, the correlation coefficient between PT and OT costs per day was high (0.62), and regression analyses found that predictors of high PT costs per day were also predictive of high OT costs per day. For example, the analyses found that late-loss ADLs are strong predictors of both PT and OT costs per day. Acumen then ran regression analyses of a range of resident characteristics on PT and OT costs per day separately and found that the coefficients in both models followed similar patterns. Finally, resident characteristics were found to be better predictors of the sum of PT and OT costs per day than for either PT or OT costs separately. These analyses used a

variety of variables from the MDS, as well as PT, OT, and SLP costs per day. More information on these analyses can be found in section 3.3.1 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>.

Given the results of this analytic work, we are considering combining PT and OT costs under a single case-mix adjusted component, while addressing SLP costs through a separate case-mix adjusted component. The next step in our analysis was to identify resident characteristics that were best predictive of PT/OT costs per day. To accomplish this, we conducted cost regressions with a host of variables from the MDS assessment, the prior inpatient claims, and the SNF claims that may have been predictive of relative increases in PT/OT costs. The variables were selected with the goal of being as inclusive as possible of the characteristics recorded on the MDS assessment, and also included information from the prior inpatient stay. The selection also incorporated clinical input. These initial costs regressions were exploratory and meant to identify a broad set of resident characteristics that are predictive of PT/OT resource utilization. The results were used to inform which variables should be investigated further and ultimately included in the payment system. A table of all of the variables considered as part of this analysis appears in the Appendix of the SNF PMR Technical Report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>. Based on our regression analyses, we found that the three most relevant predictors of PT/OT costs per day were the clinical reasons for the SNF stay, the resident's functional status, and the presence of a cognitive impairment. More information on this analysis can be found in section 3.4.1 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>.

Under the RUG-IV case-mix model, residents are first categorized based on being a rehabilitation resident or a non-rehabilitation resident, and then categorized further based on additional aspects of the resident's care. Under the RCS-I case-mix model, for the purposes of determining the resident's PT/OT group and, as will be discussed below, the resident's SLP group, the resident is first categorized based on the clinical reasons for the resident's SNF stay. Empirical analyses demonstrated that the clinical basis for the resident's stay

(that is, the primary reason the resident is in the SNF) proved a strong predictor of therapy costs. More detail on these analyses can be found in section 3.4.1 of the SNF PMR Technical Report. In consultation with stakeholders (industry representatives, beneficiary representatives, clinicians, and payment policy experts) at multiple technical expert panels (TEPs), we created a set of ten inpatient clinical categories that we believe capture the range of general resident types which may be found in a SNF. These clinical categories are provided in Table 3.

TABLE 3—CLINICAL CATEGORIES

Major Joint Replacement or Spinal Surgery.	Cancer.
Non-Surgical Orthopedic/Musculoskeletal.	Pulmonary.
Orthopedic Surgery (Except Major Joint).	Cardiovascular and Coagulations.
Acute Infections Medical Management	Acute Neurologic. Non-Orthopedic Surgery.

Once we identified these clinical categories as being generally predictive of resource utilization in a SNF, we then undertook the necessary work to identify those categories predictive of PT/OT costs specifically. We conducted additional regression analyses to determine if any of these categories predicted similar levels of PT/OT as other categories, which may provide a basis for combining categories together where similar resident costs were predicted. As a result of this analysis, we found that the ten inpatient clinical categories could be collapsed into five clinical categories, which predict varying degrees of PT/OT costs. Acute infections, cancer, pulmonary, cardiovascular and coagulations, and medical management were collapsed into one clinical category entitled “Medical Management” because their residents had similar PT/OT costs. Similarly, orthopedic surgery (except major joint) and non-surgical orthopedic/musculoskeletal were collapsed into a new “Other Orthopedic” category for equivalent reasons. The remaining three categories (Acute Neurologic, Non-Orthopedic Surgery, and Major Joint Replacement or Spinal Surgery) showed distinct PT/OT cost profiles and were thus retained as independent categories. More information on this analysis can be found in section 3.4.2 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPTS/>

therapyresearch.html. These collapsed categories, which would be used to categorize a resident initially under the PT/OT case-mix component, are presented in Table 4.

TABLE 4—PT/OT CLINICAL CATEGORIES

Major Joint Replacement or Spinal Surgery. Other Orthopedic. Non-Orthopedic Surgery. Acute Neurologic. Medical Management.
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With regard to operationalizing this categorization, we are considering using item I8000 on the MDS 3.0 to allow providers to report the resident’s primary diagnosis. More specifically, the first line in item I8000 would be used by providers to report the ICD–10–CM code which represents the primary reason for the resident’s SNF Part A stay.

In addition to the resident’s initial clinical categorization, as discussed previously in this section, regression analyses demonstrated that the resident’s functional status is also predictive of PT/OT costs. However, the existing ADL scale used to classify residents into a RUG–IV group captures little variation in PT/OT costs, though this is unsurprising as the existing ADL scale was never intended for this purpose. Therefore, we found it appropriate to consider revisions to the ADL scale used to categorize the functional status of residents under the PT/OT component in a manner that is predictive of PT/OT costs.

Under the RUG–IV case-mix system, a resident’s ADL or functional score is calculated based on a combination of self-performance and support items coded by SNFs in Section G of the MDS 3.0 for four ADL areas: Transfers; eating; toileting; and bed mobility. Each ADL may be scored for four points, with a potential total score as high as 16 points. Under the RCS–I case-mix model, a resident would be categorized, as it pertains to function, using only three of these ADL areas, specifically transfers, eating, and toileting. We removed bed mobility from this list, based on feedback we received from clinicians working on the research project and verified through presentation to stakeholders during our TEPs, that bed mobility depends partly on the type of bed, and therefore it is likely confounded by facility procedures, rather than exclusively providing information about the resident’s function. Therefore, to help eliminate potential determinants of a resident’s functional level which may be

related to facility decisions on support provided to a resident regardless of need, we believe it would be more appropriate to focus on those ADL areas which are most relevant to the resident’s actual capabilities and needs. To this end, the functional score used as part of the RCS–I case-mix model for purposes of categorizing residents under the PT/OT case-mix component would only use the self-performance items for these three ADL areas and ignore the support items coded for these areas. We believe that the self-performance items are a closer reflection of the resident’s ability to perform a task, while the support items are more descriptive of the staff’s practices and level of effort, which may not be consistent across facilities. We believe that the self-performance items better represent the actual needs of the resident, while the support items represent facility resource decisions. Therefore, we believe that a resident’s ADL score, which would be used to categorize a resident under RCS–I’s PT/OT case-mix component, should be based on only the self-performance items for the transfer, eating, and toileting areas in Section G of the MDS 3.0.

In addition to these changes, we also are considering that, for purposes of classifying a resident under RCS–I’s PT/OT case-mix component, each of these ADL areas would be scored for a total of 6 points, rather than the current 4 points under the RUG–IV model, where the number of points increases with predicted increases in the resident’s PT/OT costs. Using 6 points would allow us to consider the impact on PT/OT costs for each of the 6 possible performance levels in the ADL self-performance items. Under the RUG–IV model, if the SNF codes that the “activity did not occur” or “occurred only once”, then these items are ignored for purposes of categorizing the resident for ADL purposes. However, cost regressions revealed that these two codes can predict lower costs for PT/OT services, which we believe is an important aspect of generally predicting PT/OT costs. Therefore, these two codes would be incorporated into the scoring for a resident’s ADL score under the PT/OT component of the RCS–I case-mix model. In Table 5, we provide the scoring algorithm used for each of the three ADL areas and how many points would be scored for each potential response for each area. We determined the ADL scoring scale by first testing the relationship between each possible response to the three selected ADL items and PT/OT costs per day. This investigation revealed that therapy costs

first increase, then decrease with increasing dependence on the transfer and toileting items. Residents who require assistance to perform these ADLs tend to have higher PT/OT costs than both residents who are completely independent and residents who are completely dependent. However, costs consistently decrease with increasing dependence on the eating item. The

points are assigned to each possible response to the three selected ADL items based on the observed cost patterns. As Table 5 shows, the points assigned to each response mirror the inverse U-shape of the dependence-cost curve for the transfer and toileting items and the monotonic decrease in costs associated with increasing dependence on the eating item. This produces a

functional score that ranges from 0 to 18. As opposed to the ADL score used in RUG-IV, the functional score has a linear relationship with PT/OT costs: As the score increases, PT/OT costs per day also increase. In section 3.4.1 of the SNF PMR Technical report, we provide additional information on the analyses that led to the construction of this ADL score.

TABLE 5—PT/OT ADL SCORING SCALE

ADL self-performance score	Transfer	Toileting	Eating
Independent	+3	+3	+6
Supervision	+4	+4	+5
Limited Assistance	+6	+6	+4
Extensive Assistance	+5	+5	+3
Total Dependence	+2	+2	+2
Activity Occurred only Once or Twice	+1	+1	+1
Activity did not Occur	+0	+0	+0

The final aspect of categorizing a resident under the PT/OT component of the RCS-I case-mix model is related to the resident's cognitive status. Currently under the SNF PPS, cognitive status is used to classify a small portion of residents that fall into the Behavioral Symptoms and Cognitive Performance RUG-IV category. For all other residents, cognitive status is not used in determining the appropriate payment for a resident's care. However, industry representatives and clinicians at multiple TEPs suggested that a resident's cognitive status can have a significant impact on a resident's predicted PT/OT costs. This was reinforced by empirical analyses conducted by Acumen. Sections 3.3.1, 3.4.1, and 3.4.2 of the SNF PMR Technical report contains more information on these analyses (available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>). Therefore, we believe that a resident's cognitive status should be considered as a predictor of PT/OT costs.

Under the RUG-IV model, cognitive status is assessed using the Brief Interview for Mental Status (BIMS) on the MDS 3.0. The BIMS is based on three items: "Repetition of three words;" "temporal orientation;" and "recall." The sum of these numbers is the BIMS summary score. The BIMS score is from 0 to 15, with 0 assigned to residents with the worst cognitive performance and 15 assigned to residents with the highest performance. Residents with a BIMS score less than or equal to 9 classify for the Behavioral Symptoms and Cognitive Performance category.

However, in approximately 15 percent of 5-day MDS assessments, a BIMS is not completed: In 12 percent of cases the interview is not attempted, and for 3 percent of cases the interview is attempted but cannot be completed. The MDS directs assessors to skip the BIMS if the resident is rarely or never understood (this is scored as "skipped"). In these cases, the MDS requires assessors to complete the Staff Assessment for Mental Status (items C0700-C1000). The Cognitive Performance Scale (CPS) is used to assess cognitive function based on the Staff Assessment for Mental Status. The Staff Assessment for Mental Status consists of four items: "Short-term Memory OK," "Long-term Memory OK," "Memory/Recall Ability," and "Cognitive Skills for Daily Decision Making." However, only "Short-term Memory OK" and "Cognitive Skills for Daily Decision Making" are currently used for payment. In MDS 2.0, the CPS was used as the sole measure of cognitive status. A resident was assigned a CPS score from 0 to 6 based on responses to several items on the MDS, with 0 indicating the resident was cognitively intact and 6 indicating the highest level of cognitive impairment. Any score of 3 or above was considered cognitively impaired. The CPS on the current version of the MDS (3.0) functions very similarly. Instead of assigning a score to each resident, a resident is determined to be cognitively impaired if he or she meets the criteria to receive a score of 3 or above on the CPS. Residents who meet this criteria are classified in the Behavioral Symptoms and Cognitive Performance category under RUG-IV, if they do not

meet the criteria for a higher-paying category.

Given that the 15 percent of residents who are not assessed on the BIMS must be assessed using a different scale that relies on a different set of MDS items, there is currently no single measure of cognitive status that allows comparability across all residents. To address this issue, Thomas et al., in a 2015 paper, proposed use of a new cognitive measure, the Cognitive Function Scale (CFS), which combines scores from the BIMS and CPS into one scale that can be used to compare cognitive function across all residents (Thomas KS, Dosa D, Wysocki A, Mor V; *The Minimum Data Set 3.0 Cognitive Function Scale*. Med Care. <https://www.ncbi.nlm.nih.gov/pubmed/?term=25763665>). Following a suggestion from the June 2016 TEP, we explored using the CFS as a measure of cognition, and found that there is a relationship between the different levels of the cognitive scale and resident costs. More information on this analysis can be found in section 3.4.1 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>. Therefore, we are considering using the CFS as a cognitive measure in the RCS-I system. The RUG-IV system also incorporates both the BIMS and CPS score, but the CFS blends them together into one measure of cognitive status. Details on how the BIMS score and CPS score are determined using the MDS assessment are described above. The CFS places residents into one of four cognitive performance categories based on their score on either the BIMS or CPS, as shown in Table 6.

TABLE 6—CFS CLASSIFICATION METHODOLOGY

CFS cognitive scale	BIMS score	CPS score
Cognitively Intact	13–15	.....
Mildly Impaired	8–12	0–2
Moderately Impaired	0–7	3–4
Severely Impaired .....	.....	5–6

Once each of these variables—clinical reasons for the SNF stay, the resident’s functional status, and the presence of a cognitive impairment—in predicting resident PT/OT costs was identified, we then used a statistical regression technique called the Classification and Regression Tree (CART) to determine the most appropriate splits in resident PT/OT case-mix groups using these three variables. In other words, CART was used to determine how many PT/OT case-mix groups should exist under the RCS–I model under consideration and what types of residents or score ranges should be combined to form each of those PT/OT case-mix groups. CART is a non-parametric decision tree learning technique that produces either classification or regression trees, depending on whether the dependent variable is categorical or numeric, respectively. Using the CART technique to create payment groups is advantageous because it is both immune to outliers and resistant to irrelevant parameters. The CART was used to create payment groups in other Medicare settings. For example, it determined Case Mix Groups (CMGs) splits within rehabilitation impairment groups (RICs) when the inpatient rehabilitation facilities (IRF) PPS was developed. This methodology is more thoroughly explained in section 3.4.2 of the SNF PMR Technical Report (available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>).

Based on the CART algorithm, we determined that 30 case-mix groups would be necessary to classify residents adequately in terms of their PT/OT costs, in a manner that captures sufficient variation in PT/OT costs without creating unnecessarily granular separations. In addition, the PT/OT case-mix groups also reflect certain administrative decisions made by our project team. For example, while CART may have created different breakpoints for the functional score in different clinical categories, we believed that using a consistent split in scores across clinical categories would improve the simplicity of the case-mix model without compromising its accuracy. Therefore, we used the splits created by the CART algorithm as the basis for the consistent splits selected for the case-mix groups, simplifying the CART output while retaining important features of the CART-generated splits. Characteristics such as age, which CART did not select as an important criterion for classifying residents, were dropped, while splits that recurred across clinical categories, such as dividing residents into cognitively intact (CFS=1,2) and cognitively impaired (CFS=3,4) were retained. To confirm that the consistent splits approach did not require a notable sacrifice in payment accuracy, we used regression analysis to test the ability of the CART-generated splits and the consistent splits to predict PT/OT costs per day. We found that using the consistent splits resulted in only a minor reduction in predictive ability (a decrease of 0.004 in the R-squared). Section 3.4.2 of the SNF PMR Technical Report contains more details on these analyses (available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>).

We provide the criteria for each of these groups, along with the CMI for each group, in Table 7. As shown in the table, three factors are used to classify

each resident for PT/OT payment: Clinical category, function score, and the presence of moderate or severe cognitive impairment. Each case-mix group corresponds to one clinical category, one function score range, and the presence or absence of moderate/severe cognitive impairment. Based on these three factors, we are considering classifying a resident into one of the 30 groups shown in Table 7.

To help ensure that payment reflects the average relative resource use at the per diem level, CMIs would be set to reflect relative case-mix related differences in costs across groups. CMIs for the PT/OT component would be calculated based on two factors. One factor is the average per diem costs of a case-mix group relative to the population average. Relative differences in costs due to different length of stay distribution across groups are removed from this calculation (as further discussed in the description of variable per diem payments in section III.D.4 of this ANPRM). The other factor is the average variable per diem adjustment factor of the group relative to the population average. In this calculation, average per diem costs equal total PT/OT costs in the group divided by number of utilization days in the group, and similarly the average variable per diem adjustment factor equals the sum of PT/OT variable per diem adjustment factors for all utilization days in the group divided by the number of utilization days. More information on the variable per diem adjustment factor is discussed in section III.D.4 of this ANPRM. This method would help ensure that the share of payment for each case-mix group is equal to its share of total costs of the component. The full methodology used to develop CMIs is presented in section 3.12 of the SNF PMR Technical Report is available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>.

TABLE 7—PT/OT CASE-MIX CLASSIFICATION GROUPS

Clinical category	Function score	Moderate/severe cognitive impairment	Case-mix group	Case-mix index
Major Joint Replacement or Spinal Surgery	14–18	No	TA	1.82
	14–18	Yes	TB	1.59
	8–13	No	TC	1.73
	8–13	Yes	TD	1.45
	0–7	No	TE	1.68
	0–7	Yes	TF	1.36
	Other Orthopedic	14–18	No	TG
14–18		Yes	TH	1.55
8–13		No	TI	1.58
8–13		Yes	TJ	1.39
0–7		No	TK	1.38
0–7		Yes	TL	1.14

TABLE 7—PT/OT CASE-MIX CLASSIFICATION GROUPS—Continued

Clinical category	Function score	Moderate/severe cognitive impairment	Case-mix group	Case-mix index
Acute Neurologic	14–18	No	TM	1.61
	14–18	Yes	TN	1.48
	8–13	No	TO	1.52
	8–13	Yes	TP	1.36
	0–7	No	TQ	1.47
	0–7	Yes	TR	1.17
Non-Orthopedic Surgery	14–18	No	TS	1.57
	14–18	Yes	TT	1.43
	8–13	No	TU	1.38
	8–13	Yes	TV	1.17
	0–7	No	TW	1.11
	0–7	Yes	TX	0.80
Medical Management	14–18	No	T1	1.55
	14–18	Yes	T2	1.39
	8–13	No	T3	1.36
	8–13	Yes	T4	1.17
	0–7	No	T5	1.10
	0–7	Yes	T6	0.82

Under the RCS–I case-mix model, all residents would be classified into one, and only one, of these 30 PT/OT case-mix groups. As opposed to the RUG–IV system that determines therapy payments based only on the amount of therapy provided, these groups classify residents based on three resident characteristics shown to be predictive of PT/OT utilization. Thus, we believe that the PT/OT case-mix groups would provide a better measure of resource use and would provide for more appropriate payment under the SNF PPS. We invite comments on the series of ideas and the approach we are considering above associated with the PT/OT component of the RCS–I case-mix model.

c. Speech-Language Pathology Case-Mix Classification

As discussed above, many of the resident characteristics which we found to be predictive of increased PT/OT costs were predictive of lower SLP costs. As a result of this inverse relationship, using the same set of predictors to case-mix adjust a single therapy component would obscure important differences in predicting relative differences in resident therapy costs and make any predictive model that attempts to predict total therapy cost inherently less accurate. Therefore, we believe it is appropriate to have a separately adjusted case-mix SLP component that is specifically designed to predict relative differences in SLP costs. As discussed in the prior section, costs derived from the charges on claims and CCRs on facility cost reports were used as the measure of resource use to develop an alternative payment system. Costs are reflective of therapy utilization

as they are correlated to therapy minutes recorded for each therapy discipline.

Following the same methodology we used to identify predictors of PT/OT costs, our project team conducted cost regressions with a host of variables from the MDS assessment, prior inpatient claims, and SNF claims that were identified as likely to be predictive of relative increases in SLP costs. The variables were selected with the goal of being as inclusive of the measures recorded on the MDS assessment as possible, and also included information from the prior inpatient stay. The selection also incorporated clinical input from TEP panelists, Acumen clinical staff, and CMS clinical staff. These initial costs regressions were exploratory and meant to identify a broad set of resident characteristics that are predictive of SLP resource utilization. The results were used to inform which variables should be investigated further and ultimately included in the payment system. A table of all of the variables considered in this analysis appears in the Appendix of the SNF PMR Technical Report. Based on these cost regressions, we identified a set of three categories of predictors relevant in predicting relative differences in SLP costs: Clinical reasons for the SNF stay, presence of a swallowing disorder or mechanically-altered diet, and the presence of an SLP-related comorbidity or cognitive impairment. A model using these predictors to predict SLP costs per day accounted for 14.5 percent of the variation in costs, while a very extensive model using 1,016 resident characteristics only predicted 19.3

percent of the variation. This shows that these predictors alone explain a large share of the variation in SLP costs per day that can be explained with resident characteristics. More information on this analysis can be found in section 3.5.1 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>.

As with the PT/OT component, we began with the set of clinical categories identified in Table 3 (meant to capture general differences in resident resource utilization) and ran cost regressions to determine which categories may be predictive of generally higher relative SLP costs. Through this analysis, we found that one clinical group was particularly predictive of increased SLP cost, which was the Acute Neurologic group. More detail on this investigation can be found in section 3.5.2 of the SNF PMR Technical Report. Therefore, to determine the initial resident classification into an SLP group under the RCS–I, residents would first be categorized, using the clinical reasons for the resident's SNF stay recorded on the first line of Item I8000 on the MDS assessment, into one of two groups, either the "Acute Neurologic" clinical category, or into a Non-Neurologic group that includes the remaining clinical categories found in Table 3: Major Joint Replacement or Spinal Surgery; Non-Surgical Orthopedic/Musculoskeletal; Orthopedic Surgery (Except Major Joint); Acute Infections, Cancer, Pulmonary; Non-Orthopedic Surgery; Cardiovascular and Coagulations; and Medical Management.

In addition to the clinical reason for the SNF stay, cost regressions and TEP members also identified the presence of a swallowing disorder or a mechanically-altered diet (which refers to food that has been altered to make it easier for the resident to chew and swallow to address a specific resident need), as a predictor of relative increases in SLP costs. First, residents who exhibited the signs and symptoms of a swallowing disorder, as identified using K0100Z on the MDS 3.0, demonstrated significantly higher SLP costs than those who did not exhibit such signs and symptoms. Therefore, we considered including the presence of a swallowing disorder as a component in predicting SLP costs. However, when this information was presented during the October 2016 TEP, stakeholders indicated that the signs and symptoms of a swallowing disorder may not be as readily observed when a resident is on a mechanically-altered diet, and requested that we also consider evaluating the presence of a mechanically-altered diet, as determined by item K0510C2 on the MDS 3.0, as an additional predictor of increased SLP costs. Our project team conducted this analysis and found that there was an associated increase in SLP costs when a mechanically-altered diet was present. Moreover, this analysis revealed that while SLP costs may increase when either a swallowing disorder or mechanically-altered diet is present, resident SLP costs increased even more when both of these items were present. More detail on this investigation and these analyses can be found in section 3.5.1 of the SNF PMR Technical Report. As a result, we agree with the stakeholders that including a mechanically-altered diet would be an important component of predicting relative increases in resident SLP costs, and thus, in addition to the clinical categorization, we are considering classifying residents as having either a swallowing disorder, being on a mechanically altered diet, both, or neither for purposes of classifying the resident under the SLP component.

As a final aspect of the SLP component case-mix adjustment, we found that the presence of a cognitive impairment or SLP-related comorbidity

affected relative differences in SLP costs. More specifically, we found that the presence of certain SLP-related comorbidities or the presence of a mild to severe cognitive impairment (as defined by the CFS methodology described in Table 6 in section III.D.3.b. of this ANPRM) was correlated with relative increases in SLP costs. For each condition or service included as an SLP-related comorbidity, the presence of the condition or service was associated with at least a 43 percent increase in average SLP costs per day. The presence of a mild to severe cognitive impairment was associated with at least a 100 percent increase in average SLP costs per day. Similar to the analysis conducted in relation to the PT/OT component, the project team ran cost regressions on a broad list of possible conditions, with that list being available in section 3.5.1 of the SNF PMR Technical Report (available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>). Based on that analysis, and in consultation with stakeholders during our TEPs and clinicians, we have identified the conditions listed in Table 8 to be those SLP-related comorbidities which we believe would best serve to predict relative differences in SLP costs. Acumen used diagnosis codes on the most recent inpatient claim for each SNF stay and the SNF claim to identify these diagnoses and found that residents with these conditions had much higher SLP costs per day. More detail on these analyses can be found in section 3.5.1 of the SNF PMR Technical Report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>.

Once each of these variables—clinical reasons for the SNF stay, presence of a swallowing disorder or mechanically-altered diet, and the presence of an SLP-related comorbidity or cognitive impairment—found to be useful in predicting resident SLP costs was identified, we then used the CART algorithm, as we discussed above in relation to the PT/OT component, to determine the most appropriate splits in resident SLP case-mix groups using these three variables. This methodology and the results of our analysis are more thoroughly explained in sections 3.4.2 and 3.5.2 of the SNF PMR Technical Report. Based on the CART algorithm, we determined that 18 case-mix groups would be necessary to classify residents adequately in terms of their SLP costs, in a manner that captures sufficient variation in SLP costs without creating unnecessarily granular separations. The accuracy of this model was confirmed by comparing the ability of the CART model and various consistent split models to predict SLP costs per day. More information on this analysis can be found in section 3.5.2 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>. We provide the criteria for each of these groups, along with the CMI for each group, in Table 9.

To help ensure that payments reflect the average relative resource use at the per diem level, CMIs would be set to reflect case-mix related relative differences in costs across groups. CMIs for the SLP component would be calculated based on the average per diem costs of a case-mix group relative to the population average. Relative differences in costs due to different length of stay distribution across groups are removed from the calculation. In this calculation, average per diem costs equal total SLP costs in the group divided by number of utilization days in the group. This method would help ensure that the share of payment for each case-mix group is equal to its share of total costs of the component. The full methodology used to develop CMIs is presented in section 3.12 of the SNF PMR Technical Report.

TABLE 8—SLP-RELATED COMORBIDITIES

Aphasia	Laryngeal Cancer.
CVA, TIA, or Stroke ..	Apraxia.
Hemiplegia or Hemiparesis.	Dysphagia.
Traumatic Brain Injury	ALS.
Tracheostomy (while Resident).	Oral Cancers.
Ventilator (while Resident).	Speech and Language Deficits.

TABLE 9—SLP CASE-MIX CLASSIFICATION GROUPS

Clinical category	Presence of swallowing disorder or mechanically-altered diet	SLP-related comorbidity or mild to severe cognitive impairment	Case-mix group	Case-mix index
Acute Neurologic	Both	Both	SA	4.19
	Both	Either	SB	3.71
	Both	Neither	SC	3.37

TABLE 9—SLP CASE-MIX CLASSIFICATION GROUPS—Continued

Clinical category	Presence of swallowing disorder or mechanically-altered diet	SLP-related comorbidity or mild to severe cognitive impairment	Case-mix group	Case-mix index
Non-Neurologic	Either	Both	SD	3.67
	Either	Either	SE	3.12
	Either	Neither	SF	2.54
	Neither	Both	SG	2.97
	Neither	Either	SH	2.06
	Neither	Neither	SI	1.28
	Both	Both	SJ	3.21
	Both	Either	SK	2.96
	Both	Neither	SL	2.63
	Either	Both	SM	2.62
	Either	Either	SN	2.22
	Either	Neither	SO	1.70
	Neither	Both	SP	1.91
	Neither	Either	SQ	1.38
	Neither	Neither	SR	0.61

As with the PT/OT component, under the RCS–I case-mix model, all residents would be classified into one, and only one, of these 18 SLP case-mix groups. As opposed to the RUG–IV system that determines therapy payments based only on the amount of therapy provided, under the RCS–I case-mix model, residents are classified into SLP case-mix groups based on resident characteristics shown to be predictive of SLP utilization. Thus, we believe that the SLP case-mix groups would provide a better measure of resource use and would provide for more appropriate payment under the SNF PPS. We invite comments on the series of ideas and the approach we are considering above associated with the SLP component of the RCS–I case-mix model.

d. Nursing Case-Mix Classification

The RUG–IV classification system first divides residents into “rehabilitation residents” and “non-rehabilitation residents” based on the amount of therapy a resident receives and other aspects of a resident’s care. For rehabilitation residents, where the primary driver of payment classification is the intensity of therapy services that a resident receives, differences in nursing needs can be obscured. For example, for two residents classified into the RUB RUG–IV category, which would occur on the basis of therapy intensity and ADL score alone, the nursing component for each of these residents would be multiplied by a CMI of 1.56. This reflects that residents in that group were found, during our previous STM work, to have nursing costs 56 percent higher than residents with a 1.00 index. We would note that while this CMI also includes adjustments made in FY 2010 and FY

2012 for budget-neutrality purposes, what is clear is that two residents, who may have significantly different nursing needs, are nevertheless deemed to have the very same nursing costs, and SNFs would receive the same nursing payment for each. Given the discussion above, which noted that approximately 60 percent of resident days are billed using one of three Ultra-High Rehabilitation RUGs (two of which have the same nursing index), the current case-mix model effectively classifies a significant portion of SNF therapy residents as having exactly the same degree of nursing needs and requiring exactly the same amount of nursing resources. As such, we believe that further refinement of the case-mix model would be appropriate to better differentiate among patients with different nursing needs.

An additional concern in the RUG–IV system is the use of therapy minutes to determine not only therapy payments, but also nursing payments. For example, residents classified into the RUB RUG fall in the same ADL score range as residents classified into the RVB RUG. The only difference between those residents is the number of therapy minutes that they received. However, the difference in payment that results from this difference in therapy minutes impacts not only the RUG–IV therapy component, but also the nursing component: Nursing payments for RUB residents are 40 percent higher than nursing payments for RVB residents. As a result of this feature of the RUG–IV system, the amount of therapy minutes provided to a resident is one of the main sources of variation in nursing payments, at the expense of other resident characteristics that may better reflect nursing needs.

We believe that the more nuanced and resident-centered classifications in current RUG–IV non-rehabilitation categories are obscured under the current payment system, which utilizes only a single RUG–IV category for payment purposes and which has over 90 percent of resident days billed using a rehabilitation RUG. The RUG–IV non-rehabilitation groups classify residents based on their ADL score, the use of extensive services, the presence of specific clinical conditions such as depression, pneumonia or septicemia, and the use of restorative nursing services, among other characteristics. These characteristics are associated with nursing utilization, and the STRIVE study accounted for relative differences in nursing staff time across groups. Therefore, we are considering continuing to use the existing non-rehabilitation RUGs for the purposes of resident classification under RCS–I, but also modify nursing payment so that a resident’s non-rehabilitation RUG classification is always a factor in a resident’s payment calculation.

For example, consider two residents. The first classifies into the RUB rehabilitation RUG (on the basis of the resident’s therapy minutes) and into the CC1 non-rehabilitation RUG (on the basis of having Pneumonia), while the second classifies into the RUB rehabilitation RUG (on the basis of the resident’s therapy minutes) and the HC1 non-rehabilitation RUG (on the basis of the resident being a Quadriplegic with a high ADL score). Under the current RUG–IV based payment model, the billing for both residents would utilize only the RUB rehabilitation RUG, despite clear differences in their associated nursing needs and resident characteristics. We are considering an

approach where, under the RCS–I payment model, for purposes of determining payment under the nursing component, the first resident would be classified into CC1, while the second would be classified into HC1. We believe that classifying the residents in this manner for payment purposes would capture variation in nursing costs in a more accurate and granular way than relying on the rehabilitation RUG’s nursing CMI.

In addition to considering the use of the resident’s non-rehabilitation RUG–IV classification for purposes of RCS–I payments, we also are considering the possibility of revising the existing nursing CMIs and updating these indexes through use of the STRIVE STM data which were originally used to create these indexes. Under the current payment system, non-rehabilitation nursing indexes were calculated to capture variation in nursing utilization by using only the staff time collected for the non-rehabilitation population. We believe that, to provide a more accurate sense of the relative nursing resource needs of the SNF population, the nursing indexes should reflect nursing utilization for all residents. To accomplish this, Acumen first replicated the methodology described in the FY 2010 SNF PPS rule (74 FR 22236 through 22238), but classified the full STRIVE study population under non-rehabilitation RUGs using updated wage data. That methodology proceeded according to the following steps:

- (1) Calculate average wage-weighted staff time (WWST) for each STRIVE study resident using FY 2015 SNF wages.
- (2) Assign the full STRIVE population to the appropriate non-rehabilitation RUG.
- (3) Apply sample weights to WWST estimates to allow for unbiased population estimates. The reason for this weighting is that the STRIVE study was not a random sample of residents. Certain key subpopulations, such as residents with HIV/AIDS, were over-sampled to ensure that there were enough residents to draw conclusions on the subpopulations’ resource use. As a result, STRIVE researchers also developed sample weights, equal to the inverse of each resident’s probability of selection, to permit calculation of unbiased population estimates. Applying the sample weights to a summary statistic results in an estimate that is representative of the actual population. The sample weight method is explained in Phase I of the STRIVE study. A link to the STRIVE study is available at <https://www.cms.gov/>

Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/TimeStudy.html.

(4) Smooth WWST estimates that do not match RUG hierarchy, as was done during the STRIVE study. RUG–IV, from which the nursing RUGs are derived, is a hierarchical classification in which payment should track clinical acuity. It is intended that residents who are more clinically complex or who have other indicators of acuity, including a higher ADL score, depression, or restorative nursing services, would receive higher payment. When STRIVE researchers estimated WWST for each RUG, several inversions occurred because of imprecision in the means. These are defined as WWST estimates that are not in line with clinical expectations. The methodology used to smooth WWST estimates is explained in Phase II of the STRIVE study. A link to the STRIVE study is available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/TimeStudy.html>.

(5) Calculate nursing indexes, which reflect the average WWST for each non-rehabilitation RUG divided by the average WWST for the study population used throughout our research. This analysis is presented in section 3.6.6 of the SNF PMR Technical Report.

Through this refinement, we believe the nursing indexes under the RCS–I classification model would better reflect the varied nursing resource needs of the full SNF population. In Table 10, we provide the nursing indexes under the RCS–I classification model.

To help ensure that payment reflects the average relative resource use at per diem level, nursing CMIs would be set to reflect case-mix related relative differences in WWST across groups. Nursing CMIs would be calculated based on the average per diem nursing WWST of a case-mix group relative to the population average. In this calculation, average per diem WWST equals total WWST in the group divided by number of utilization days in the group. The full methodology used to develop CMIs is presented in section 3.12 of the SNF PMR Technical Report.

TABLE 10—NURSING INDEXES UNDER RCS–I CLASSIFICATION MODEL

RUG–IV category	Current nursing case-mix index	Nursing case-mix index
ES3	3.58	3.84
ES2	2.67	2.90
ES1	2.32	2.77
HE2	2.22	2.27
HE1	1.74	2.02
HD2	2.04	2.08

TABLE 10—NURSING INDEXES UNDER RCS–I CLASSIFICATION MODEL—Continued

RUG–IV category	Current nursing case-mix index	Nursing case-mix index
HD1	1.60	1.86
HC2	1.89	2.06
HC1	1.48	1.84
HB2	1.86	1.88
HB1	1.46	1.67
LE2	1.96	1.88
LE1	1.54	1.68
LD2	1.86	1.84
LD1	1.46	1.64
LC2	1.56	1.55
LC1	1.22	1.39
LB2	1.45	1.48
LB1	1.14	1.32
CE2	1.68	1.84
CE1	1.50	1.60
CD2	1.56	1.74
CD1	1.38	1.51
CC2	1.29	1.49
CC1	1.15	1.30
CB2	1.15	1.37
CB1	1.02	1.19
CA2	0.88	1.03
CA1	0.78	0.89
BB2	0.97	1.05
BB1	0.90	0.97
BA2	0.70	0.74
BA1	0.64	0.68
PE2	1.50	1.60
PE1	1.40	1.47
PD2	1.38	1.48
PD1	1.28	1.36
PC2	1.10	1.23
PC1	1.02	1.13
PB2	0.84	0.98
PB1	0.78	0.90
PA2	0.59	0.68
PA1	0.54	0.63

As with the previously discussed components, under the RCS–I case-mix model, all residents would be classified into one, and only one, of these 43 nursing case-mix groups.

We also used the STRIVE data to quantify the effects of HIV/AIDS diagnosis on nursing resource use. Acumen controlled for case mix by including the RCS–I resident groups (in this case, the nursing RUGs) as independent variables. The results show that even after controlling for nursing RUG, HIV/AIDS status is associated with a positive and significant increase in nursing utilization. Based on the results of regression analyses, we found that wage-weighted nursing staff time is 19 percent higher for residents with HIV/AIDS. (The weighting adjusted this estimate to account for the deliberate over-sampling of certain sub-populations in the STRIVE study, as described above.) Based on these findings, we concluded that the RCS–I nursing groups may not completely

capture the additional nursing costs associated with HIV/AIDS residents. More information on this analysis can be found in section 3.8.2 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>. Thus, as part of the case-mix adjustment of the nursing component, we are considering a 19 percent increase in payment for the nursing component for residents with HIV/AIDS. This adjustment would be applied based on the presence of ICD-10-CM code B20 on the SNF claim.

We invite comments on the series of ideas and the approach we are considering above associated with the nursing component of the RCS-I case-mix model.

e. Non-Therapy Ancillary Case-Mix Classification

Currently under the SNF PPS, payments for NTA costs incurred by SNFs are incorporated into the nursing component, which means that the CMI's used to adjust the nursing component of the SNF PPS are intended to reflect not only differences in nursing resource use, but also NTA costs. However, there have been concerns that the current nursing CMI's do not accurately reflect the basis for or the magnitude of relative differences in resident NTA costs. In its March 2016 Report to Congress, MedPAC wrote that "Almost since its inception, the SNF PPS has been criticized for encouraging the provision of unnecessary rehabilitation therapy services and not accurately targeting payments for nontherapy ancillary (NTA) services such as drugs (Government Accountability Office 2002, Government Accountability Office 1999, White et al. 2002)." (available at <http://medpac.gov/docs/default-source/reports/chapter-7-skilled-nursing-facility-services-march-2016-report.pdf>). While the PT/OT and SLP components were designed to address the first criticism raised by MedPAC above, the NTA component discussed in this section was designed to address the second criticism—specifically, that the current manner of case-mix adjusting for NTAs under the RUG-IV case-mix system is inadequate in adjusting, in a targeted manner, for relative differences in resident NTA costs. As noted in the quotation from MedPAC above, MedPAC is not the only group to offer this critique of the SNF PPS. Just as the aforementioned criticisms that MedPAC cited have existed almost since the inception of the SNF PPS itself, ideas for addressing this concern have a similarly long history.

In response to comments on the 1998 interim final rule which served to establish the SNF PPS, we published a final rule on July 30, 1999 (64 FR 41644). In this final rule, we acknowledged the commenters' concerns about the new system's ability to account accurately for NTA costs, such as the following:

There were a number of comments expressing concern with the adequacy of the PPS rates to cover the costs of ancillary services other than occupational, physical, and speech therapy (non-therapy ancillaries), including such things as drugs, laboratory services, respiratory therapy, and medical supplies. Prescription drugs or medication therapy were frequently noted areas of concern due to their potentially high cost for particular residents. Some commenters suggested that the RUG-III case-mix classification methodology does not adequately provide for payments that account for the variation in, or the real costs of, these services provided to their residents. (64 FR 41647)

In response to those comments, we stated that "we are funding substantial research to examine the potential for refinements to the case-mix methodology, including an examination of medication therapy, medically complex patients, and other nontherapy ancillary services." (64 FR 41648). Since that time, we have discussed various research initiatives engaged in identifying a more appropriate means to case-mix adjust SNF PPS payments to reflect relative differences in resident NTA costs. In this ANPRM, we are considering such a methodology, which we believe would case-mix adjust SNF PPS payments more appropriately to reflect differences in NTA costs.

Following the same methodology we used for the PT/OT and SLP components, the project team ran cost regression models to determine which resident characteristics may be predictive of relative increases in NTA costs. The three cost-related resident characteristics identified through this analysis were resident comorbidities, the use of extensive services (services provided to residents that are particularly expensive and/or invasive), and resident age. A simple resident classification generated by CART using these three characteristics alone explained 11.7 percent of the variation in NTA costs per day. We would note that while we did find a correlation between relative differences in NTA costs and resident age, we also found that the correlation between NTA costs and resident comorbidities and extensive services was much stronger and heard concerns from TEP panelists during the June 2016 TEP, which led us to remove age from further

consideration as part of the NTA component. Particularly, some panelists expressed concern that including age as a determinant of NTA payment could create access issues for the older population.

With regard to capturing comorbidity information, the project team first mapped ICD-10 diagnosis codes from the prior inpatient claim, SNF claim, and Section I of the 5-day MDS assessment to condition categories (CCs), which provide a broader sense of the impact of similar conditions on NTA costs. The full list of conditions and extensive services considered for inclusion in the NTA component appears in the Appendix of the SNF PMR Technical Report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>. This list was meant to encompass as many conditions and extensive services as possible from the MDS assessment and the CCs. We found, using cost regressions, that certain comorbidity conditions and extensive services were highly predictive of relative differences in resident NTA costs. These conditions and services are identified in Table 11. More information on this analysis can be found in section 3.7.1 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>. We would note that, based on our analysis and feedback from stakeholders at the June 2016 TEP, certain services which showed increased NTA costs were eliminated from consideration based on potential adverse incentives which may be created by linking these services to payment. Oxygen therapy and BiPAP/CPAP were excluded from consideration. Clinicians associated with the project team noted that these services are easily delivered and prone to overutilization. Additionally, the costs for these treatments for respiratory conditions are likely captured by the increase in costs associated with MDS item I6200 (asthma, COPD, or chronic lung disease). Finally, three CCs are excluded due to concerns about coding reliability: 33 (inflammatory bowel disease), 57 (personality disorders), and 66 (attention deficit disorder).

Having identified the list of relevant conditions and services for adjusting NTA payments, we considered different options for how to capture the variation in NTA costs explained by these identified conditions and services. One such method would be merely to count the number of comorbidities and services a resident receives and assign a score to that resident based on this

simple count. We found that this option did account for the additive effect of having multiple comorbidities and extensive services, but did not adequately reflect the relative differences in the impact of certain higher-cost conditions and services. We also considered a tier system similar to the one used in the IRF PPS, where SNF residents would be placed into payment tiers based on the costliest comorbidity or extensive service. However, we found that this option did not account for the additive effect noted above. To address both of these issues, we are considering the possibility of basing a resident's NTA score (which would be used to classify the resident into an NTA case-mix classification group) on a weighted-count methodology. Specifically, as shown in Table 11, each of the comorbidities and services which factor into a resident's NTA classification is assigned a certain number of points based on its relative impact on a resident's NTA costs. Those conditions and services with a greater impact on NTA costs are assigned more points, while those with less of an impact are assigned fewer points. Points are assigned by grouping together conditions and extensive services with similar ordinary least squares (OLS) regression estimates. The regression used the selected conditions and extensive services to predict NTA costs per day. More information on this methodology and analysis can be found in section 3.7.1 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPSP/therapyresearch.html>. The effect of this methodology is that the NTA component would adequately reflect relative differences in NTA costs of each condition or service, as well as the additive effect of having multiple comorbidities.

A resident's total comorbidity/extensive services score, which would be the sum of the points associated with all of a resident's comorbidities and services, would be used to classify the resident into an NTA case-mix group. For conditions and services where the source is indicated as MDS item I8000, we would consider providing a crosswalk between the listed condition and the ICD-10-CM codes which may be coded to qualify that condition to serve as part of the resident's NTA classification. MDS item I8000 is an open-ended item in the MDS assessment

where the assessment provider can fill in additional active diagnoses (in the form of ICD-10 codes) for the resident that are not explicitly on the MDS. In the case of Parenteral/IV Feeding, we are considering the possibility of separating this item into a high intensity item and a low intensity item, similar to how it is defined in the RUG-IV system. For a resident to qualify for the high intensity category, the percent of calories taken in by the resident by parenteral or tube feeding, as reported in item K0710A2 on the MDS 3.0, must be greater than 50 percent. To qualify for the low intensity category, the percent of calories taken in by the resident by parenteral or tube feeding, as reported in item K0710A2 on the MDS 3.0, must be greater than 25 percent but less than or equal to 50 percent, and the resident must receive an average fluid intake by IV or tube feeding of at least 501cc per day, as reported in item K0710B2 of the MDS 3.0. The criteria used to distinguish between high and low intensity parenteral or tube feeding is the same as is used to classify residents using this variable in the RUG-IV classification. We also want to note that the source of the HIV/AIDS score is listed as coming from the SNF claim. This is because certain states, comprising 16 in all, have state laws which prevent the reporting of HIV/AIDS diagnosis information to us through the current assessment system and/or prevent us from seeing such diagnosis information within that system, should that information be mistakenly reported. The states are Alabama, Alaska, California, Colorado, Connecticut, Idaho, Illinois, Massachusetts, Nevada, New Hampshire, New Jersey, New Mexico, South Carolina, Texas, Washington, and West Virginia.

Given this restriction, it would not be possible to have SNFs utilize the MDS 3.0 as the vehicle to report HIV/AIDS diagnosis information for purposes of determining a resident's NTA classification. We note that, currently, we use a claims reporting mechanism as the basis for the temporary AIDS add-on payment which exists under the current SNF PPS. To address the issue discussed above with respect to reporting of HIV/AIDS diagnosis information under the RCS-I model, we are considering utilizing this existing claims reporting mechanism to determine a resident's HIV/AIDS score for purposes of NTA classification. More

specifically, HIV/AIDS diagnosis information reported on the MDS would be ignored by the GROUPER software used to classify a resident into an NTA case-mix group. Instead, providers would be instructed to report to us on the associated SNF claims the HIPPS code provided to the SNF on the validation report associated with that assessment. The provider would then, following current protocol, enter ICD-10-CM code B20 on the associated SNF claim, as if it were being coded to receive payment through the current AIDS add-on payment. The PRICER software, which we use to determine the appropriate per diem payment for a provider based on their wage index and other factors, would make the adjustment to the resident's NTA case-mix group, based on the presence of the B20 code on the claim, and adjust the associated per diem payment based on the adjusted resident HIPPS code. Again, we would note that this methodology follows the same logic as the SNF PPS currently uses to pay the temporary AIDS add-on adjustment, but merely changes the target and type of adjustment from the SNF PPS per diem to the NTA component of the RCS-I case-mix model. The difference is that while under the current system, the presence of the B20 code would lead to a 128 percent increase in the per diem rate, under RCS-I, the presence of the B20 code would mean the addition of 8 points (as determined by the OLS regression described above) to the resident's NTA score and categorize the resident into the appropriate NTA group, as well as an adjustment to the nursing component, as described in section III.D.3.d. of this ANPRM.

Table 11 provides the list of conditions and extensive services that would be used for NTA classification, the source of that information, the tier into which each item falls, and the associated number of points for that condition. The tier for each comorbidity condition and extensive service is determined based on the number of points assigned to that condition. For example, all comorbidities assigned 2 points are in the "medium" tier. The tiers are only used as a mechanism to simplify understanding of the points for each condition or extensive service. Only the points are factored into the determination of the comorbidity score and ultimately the NTA resident group classification.

TABLE 11—CONDITIONS AND EXTENSIVE SERVICES USED FOR NTA CLASSIFICATION

Condition/extensive service	Source	NTA tier	Points
HIV/AIDS	SNF Claim	Ultra-High	+8
Parenteral/IV Feeding—High Intensity	MDS Item K0510A2	Very-High	+7
IV Medication	MDS Item O0100H2	High	+5
Parenteral/IV Feeding—Low Intensity	MDS Item K0710A2, K0710B2	High	+5
Ventilator/Respirator	MDS Item O0100F2	High	+5
Transfusion	MDS Item O0100I2	Medium	+2
Kidney Transplant Status	MDS Item I8000	Medium	+2
Opportunistic Infections	MDS Item I8000	Medium	+2
Infection with multi-resistant organisms	MDS Item I1700	Medium	+2
Cystic Fibrosis	MDS Item I8000	Medium	+2
Multiple Sclerosis (MS)	MDS Item I5200	Medium	+2
Major Organ Transplant Status	MDS Item I8000	Medium	+2
Tracheostomy	MDS Item O0100E2	Medium	+2
Asthma, COPD, or Chronic Lung Disease	MDS Item I6200	Medium	+2
Chemotherapy	MDS Item O0100A2	Medium	+2
Diabetes Mellitus (DM)	MDS Item I2900	Medium	+2
End-Stage Liver Disease	MDS Item I8000	Low	+1
Wound Infection (other than foot)	MDS Item I2500	Low	+1
Transplant	MDS Item I8000	Low	+1
Infection Isolation	MDS Item O0100M2	Low	+1
MRSA	MDS Item I8000	Low	+1
Radiation	MDS Item O0100B2	Low	+1
Diabetic Foot Ulcer	MDS Item M1040B	Low	+1
Bone/Joint/Muscle Infections/Necrosis	MDS Item I8000	Low	+1
Highest Ulcer Stage is Stage 4	MDS Item M300D1	Low	+1
Osteomyelitis and Endocarditis	MDS Item I8000	Low	+1
Suctioning	MDS Item O0100D2	Low	+1
DVT/Pulmonary Embolism	MDS Item I8000	Low	+1

Given the NTA scoring methodology described above, and following the same methodology used for the PT/OT and SLP components, we then used the CART algorithm to determine the most appropriate splits in resident NTA case-mix groups. This methodology is more thoroughly explained in section 3.4.2 of the SNF PMR Technical Report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPSP/therapyresearch.html>. Based on the CART algorithm, we determined that 6 case-mix groups would be necessary to classify residents adequately in terms of their NTA costs in a manner that captures sufficient variation in NTA costs without creating unnecessarily granular separations. More information on this analysis can be found in section 3.7.2 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPSP/therapyresearch.html>. We provide the criteria for each of these groups, along with the CMI for each group, in Table 12.

To help ensure that payment reflects the relative resource use at the per diem level, CMIs would be set to reflect case-mix related relative differences in costs across groups. CMIs for the NTA component would be calculated based on two factors. One factor is the average per diem costs of a case-mix group

relative to the population average. Relative differences in costs due to different length of stay distribution across groups are removed from this calculation. The other factor is the average variable per diem adjustment factor of the group relative to the population average. In this calculation, average per diem costs equal total NTA costs in the group divided by number of utilization days in the group, and similarly the average variable per diem adjustment factor equals the sum of NTA variable per diem adjustment factors for all utilization days in the group divided by the number of utilization days. More information on the variable per diem adjustments factor is discussed in section III.D.4 of this ANPRM. This method would help ensure that the share of payment for each case-mix group is equal to its share of total costs of the component, which is consistent with the notion that per diem payments reflect differences in average per diem relative resource use. The full methodology used to develop CMIs is presented in section 3.12 of the SNF PMR Technical Report.

TABLE 12—NTA CASE-MIX CLASSIFICATION GROUPS

NTA score range	NTA group	NTA case-mix index
11+	NA	3.33
8–10	NB	2.59
6–7	NC	2.02
3–5	ND	1.52
1–2	NE	1.16
0	NF	0.83

As with the previously discussed components, under the RCS–I case-mix model, all residents would be classified into one, and only one, of these 6 NTA case-mix groups. The RCS–I case-mix model creates a separate payment component for NTA services, as opposed to combining NTA and nursing into one component as in the RUG–IV system. This separation allows payment for NTA services to be based on resident characteristics that predict NTA resource utilization, rather than nursing staff time. Thus, we believe that the NTA case-mix groups would provide a better measure of resource utilization and would lead to more accurate payments under the SNF PPS.

We invite comments on the series of ideas and the approach we are considering above associated with the NTA component of the RCS–I case-mix model.

f. Payment Classifications Under RCS–I

The current SNF PPS case-mix classification system, RUG–IV, classifies each resident into a single RUG, with a single payment for all services. By contrast, the RCS–I case-mix classification system would classify each resident into four components (PT/OT; SLP; NTA; and nursing) and provide a single payment based on these classifications. The payment for each

component would be calculated by multiplying the CMI for the resident’s group by the component federal base payment rate, and then by the specific day in the variable per diem adjustment schedule (as discussed in section III.B.4. of this ANPRM). Additionally, for residents with HIV/AIDS indicated on their claim, the nursing portion of payment would be multiplied by 1.19 (as discussed in section III.B.3.d of this ANPRM). These payments would then

be added together, along with the non-case-mix component payment rate, to create a resident’s total SNF PPS per diem rate under RCS–I. This section describes how two hypothetical residents would be classified into payment groups under the current payment system and the RCS–I model we are considering. To begin, consider two residents, Resident A and Resident B, with the resident characteristics identified in Table 13.

TABLE 13—HYPOTHETICAL RESIDENT CHARACTERISTICS

Resident characteristics	Resident A	Resident B
Rehabilitation Received?	Yes	Yes.
Therapy Minutes	730	730.
Extensive Services	No	No.
ADL Score	9	9.
Clinical Category	Acute Neurologic	Major Joint Replacement.
Functional Score	15	15.
Cognitive Impairment	Moderate	Intact.
Swallowing Disorder?	No	No.
Mechanically Altered Diet?	Yes	No.
SLP Comorbidity?	No	No.
Comorbidity Score	7 (IV Medication and DM)	1 (DVT).
Other Conditions	Dialysis	Septicemia.
Depression?	No	Yes.

Currently under the SNF PPS, Resident A and Resident B would be classified into the same RUG–IV group. They both received rehabilitation, did not receive extensive services, received 730 minutes of therapy, and have an ADL score of 9. This places the two residents into the “RUB” RUG–IV group and SNFs would be paid at the same rate, despite the many differences between these two residents in terms of their characteristics, expected care needs, and predicted costs of care.

Under the RCS–I case-mix model, however, these two residents would be classified very differently. With regard to the PT/OT component, Resident A would fall into group TN, as a result of his categorization in the Acute Neurologic group, functional score within the 14 to 18 range, and the presence of a moderate to severe cognitive impairment. Resident B, however, would fall into group TA for the PT/OT component, as a result of his categorization in the Major Joint Replacement group, a functional score within the 14 to 18 range, and the absence of any moderate or severe cognitive impairment. For the SLP component, Resident A would be classified into group SE., based on his categorization in the Acute Neurologic group, the presence of Mechanically-Altered Diet and presence of moderate cognitive impairment, while Resident B would be classified into group SR, based on his categorization in the Non-

Neurologic group, the lack of any swallowing disorder or mechanically-altered diet, and absence of any SLP-related comorbidity or cognitive impairment. For the Nursing component, following the existing nursing case-mix methodology, Resident A would fall into group LC1, based on his use of dialysis services and an ADL score of 9, while Resident B would fall into group HC2, due to the diagnosis of septicemia, presence of depression, and ADL score of 9. Finally, with regard to NTA classification, Resident A would be classified in group NC, with an NTA score of 7, while Resident B would be classified in group NE., with an NTA score of 1. This demonstrates that, under the RCS–I case-mix model, more aspects of a resident’s unique characteristics and needs factor into determining the resident’s payment classification, which makes for a more resident-centered case-mix model while also eliminating, or greatly reducing, the number of service-based factors which are used to determine the resident’s payment classification. Because the RCS–I system would be based on specific resident characteristics predictive of resource utilization for each component, we expect that payments would be better aligned with resident need.

4. Variable Per Diem Adjustment Factors and Payment Schedule

Section 1888(e)(4)(G)(i) of the Act provides that payments must be adjusted for case mix, based on a resident classification system which accounts for the relative resource utilization of different types of residents. Additionally, section 1888(e)(1)(B) of the Act specifies that payments to SNFs through the SNF PPS must be made on a per-diem basis. Currently under the SNF PPS, each RUG is paid at a constant per diem rate, regardless of how many days a resident is classified in that particular RUG. However, during the course of the SNF PMR project, analyses on cost over the stay for each of the case-mix adjusted components revealed different trends in resource utilization over the course of the SNF stay. These analyses utilized costs derived from claim charges as a measure of resource utilization. Costs were derived by multiplying charges from claims by the CCRs on facility-level costs reports. As described in section III.B.3.b of this ANPRM, costs better reflect differences in the relative resource use of residents as opposed to charges, which partly reflect decisions made by providers about how much to charge payers for certain services. In examining costs over a stay, we found that for certain categories of SNF services, notably therapy and NTA services, costs declined over the course

of a stay. Based on the claim submission schedule and variation in the point during the month when a stay began, we were able to estimate resource use for a specific day in a stay. Facilities are required to submit monthly claims. Each claim covers the period from the first day during the month a resident is in the facility to the end of the month. If a resident was admitted on the first day of the month and remains in the facility (and continues to have Part A SNF coverage) until the end of the month, the claim for that month will include all days in the month. However, if a resident is admitted after the first day of the month, the first claim associated with the resident's stay will be shorter than a month. To estimate resource utilization for each day in the stay, we used the marginal estimated cost from claims of varying length based on random variation in the day of a month when a stay began. To supplement this analysis, we also looked at changes in the number of therapy minutes reported in different assessments throughout the stay. Because therapy minutes are recorded on the MDS, the presence of multiple assessments throughout the stay provided information on changes in resource use. For example, it was clear whether the number of therapy minutes a resident received changed from the 5-day assessment to the 14-day assessment. The results from this analysis were consistent with the cost from claims analysis, and showed that on average, the number of therapy minutes is lower for assessments conducted later in the stay. This finding is consistent across different lengths of stay. More information on these analyses can be found in section 3.9.1 of the SNF PMR technical report is available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>.

Analyses of the SLP component revealed that the per diem costs remain relatively constant over time, while the PT/OT and NTA component cost analyses indicate that the per diem cost for these two components decline over the course of the stay. More specifically, in the case of the PT/OT component, costs start higher in the beginning of the stay and decline slowly over the course of the stay. The NTA component cost analyses indicate significantly increased NTA costs at the beginning of a stay, consistent with how most SNF drug costs are typically incurred at the outset of a SNF stay, and then drop to a much lower level that holds relatively constant over the remainder of the SNF

stay. This indicates that resource utilization for PT/OT and NTA services change over the course of the stay. More information on these analyses can be found in section 3.9.1 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>. We were unable to assess potential changes in the level of nursing costs over a resident's stay, in particular because nursing charges are not separately identifiable in SNF claims, and nursing minutes are not reported on the MDS assessments. However, stakeholders (industry representatives and clinicians) at multiple TEPs indicated that nursing costs tend to remain relatively constant over the course of a resident's stay.

Constant per diem rates, by definition, do not track variations in resource use throughout a SNF stay, and we believe may allocate too few resources for SNF providers at the beginning of a stay. Given the trends in resource utilization discussed above, and that section 1888(e)(4)(G)(i) of the Act requires the case-mix classification system to account for relative resource use, we are considering adjustments to the PT/OT and NTA components in the RCS-I model under consideration to account for the effect of length of stay on per diem costs (the variable per diem adjustments). We are not considering such adjustments to the SLP and nursing components based on findings and stakeholder feedback, as discussed above, that resource use tends to remain relatively constant over the course of a SNF stay.

As noted above and as discussed more thoroughly in section 3.9.4 of the SNF PMR Technical Report (available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>), PT/OT costs decline at a slower rate relative to the decline in NTA costs. Therefore, in addition to considering a variable per diem adjustment, we further are considering to have separate adjustment schedules and indexes for the PT/OT component and the NTA component to more closely reflect the rate of decline in resource utilization for each component. Table 14 provides the adjustment factors and schedule we are considering for the PT/OT component, while Table 15 provides the adjustment factors and schedule we are considering for the NTA component.

In Table 14, the adjustment factor is 1.00 for days 1 to 14. This is because the analyses described above indicated that PT/OT costs remain relatively high for the first 14 days and then decline. The estimated daily rate of decline for PT/

OT costs relative to the initial fourteen days is 0.34 percent. Therefore, we believe a convenient and appropriate way to reflect this in the adjustment factors would be to have a decline of 1 percent every 3 days after day 14. The 0.34 percent rate of decline is derived from a regression model that estimates the level of resource use for each day in the stay relative to the beginning of the stay. The regression methodology and results are presented in section 3.9.3 of the SNF PMR Technical Report.

NTA resource utilization, as described above, exhibits a somewhat different pattern. NTA costs are very high at the beginning of the stay, drop rapidly after the first three days, and remain relatively stable from the fourth day of the stay. Starting on day 4 of a stay, the per diem costs drop to roughly one-third of the per diem costs in the initial 3 days. This suggests that many NTA services are provided in the first few days of a SNF stay. Therefore, we are considering setting the NTA adjustment factor for days 1 to 3 at 3.00 to reflect the extremely high initial costs, and then setting it at 1.00 (two-thirds lower than the initial level) for subsequent days. The adjustment factor was set at 3.00 for the first 3 days and 1.00 after (rather than, for example, 1.00 and 0.33, respectively) for simplicity.

Case-mix adjusted federal per diem payment for a given component and a given day would be equal to the base rate for the relevant component (either urban or rural), multiplied by the CMI for that resident, multiplied by the variable per diem adjustment factor for that specific day, as applicable. Additionally, as described in further detail in section III.B.3.d of this ANPRM, an additional 19 percent would be added to the nursing per-diem payment to account for the additional nursing costs associated with residents who have HIV/AIDS. These payments would then be added together, along with the non-case-mix component payment rate, to create a resident's total SNF PPS per diem rate under the RCS-I model under consideration.

We invite comments on the ideas and the approach we are considering, as discussed above.

TABLE 14—VARIABLE PER-DIEM ADJUSTMENT FACTORS AND SCHEDULE—PT/OT

Medicare payment days	Adjustment factor
1–14	1.00
15–17	0.99
18–20	0.98
21–23	0.97

TABLE 14—VARIABLE PER-DIEM ADJUSTMENT FACTORS AND SCHEDULE—PT/OT—Continued

Medicare payment days	Adjustment factor
24–26	0.96
27–29	0.95
30–32	0.94
33–35	0.93
36–38	0.92
39–41	0.91
42–44	0.90
45–47	0.89
48–50	0.88
51–53	0.87
54–56	0.86
57–59	0.85
60–62	0.84
63–65	0.83
66–68	0.82
69–71	0.81
72–74	0.80
75–77	0.79
78–80	0.78
81–83	0.77
84–86	0.76
87–89	0.75
90–92	0.74
93–95	0.73
96–98	0.72
99–100	0.71

TABLE 15—VARIABLE PER-DIEM ADJUSTMENT FACTORS AND SCHEDULE—NTA

Medicare payment days	Adjustment factor
1–3	3.0
4–100	1.0

C. Use of the Resident Assessment Instrument—Minimum Data Set, Version 3

1. Potential Revisions to Minimum Data Set (MDS) Completion Schedule

Consistent with section 1888(e)(6)(B) of the Act, to classify residents under the SNF PPS, we use the MDS 3.0 Resident Assessment Instrument. Within the SNF PPS, there are two categories of assessments, scheduled and unscheduled. In terms of scheduled assessments, SNFs are required to complete assessments on or around Days 5, 14, 30, 60, and 90 of a resident's Part A SNF stay, including certain grace days. Payments based on these assessments depend upon standard Medicare payment windows associated with each scheduled assessment. More specifically, each of the Medicare-required scheduled assessments has defined days within which the Assessment Reference Date (ARD) must be set. The ARD is the last day of the observation (or "look-back") period that the assessment covers for the resident. The facility is required to set the ARD on the MDS form itself or in the facility software within the appropriate timeframe of the assessment type being completed. The clinical data collected from the look-back period is used to determine the payment associated with each assessment. For example, the ARD for the 5-day PPS Assessment is any day between Days 1 to 8 (including Grace Days). The clinical data collected during the look-back period for that assessment is used to determine the SNF payment

for Days 1 to 14. Section 413.343(b), MDS 3.0 RAI Manual Chapter 2.5, 2.8. Unscheduled assessments, such as the Start of Therapy (SOT) Other Medicare Required Assessment (OMRA), the End of Therapy OMRA (EOT OMRA), the Change of Therapy (COT) OMRA, and the Significant Change in Status Assessment (SCSA or Significant Change), may be required during the resident's Part A SNF stay when triggered by certain defined events. For example, if a resident is being discharged from therapy services, but remaining within the facility to continue the Part A stay, then the facility may be required to complete an EOT OMRA. Each of the unscheduled assessments affects payment in different and defined manners. A description of the SNF PPS scheduled and unscheduled assessments, including the criteria for using each assessment, the assessment schedule, payment days covered by each assessment, and other related policies, are set forth in the MDS 3.0 RAI manual on the CMS Web site (available at <https://downloads.cms.gov/files/MDS-30-RAI-Manual-V114-October-2016.pdf>). Table 16 outlines when each SNF PPS assessment is required to be completed and its effect on SNF PPS payment.

TABLE 16—CURRENT PPS ASSESSMENT SCHEDULE

Scheduled PPS assessments			
Medicare MDS assessment schedule type	Assessment reference date	Assessment reference date grace days	Applicable standard Medicare payment days
5-day	Days 1–5	6–8	1 through 14.
14-day	Days 13–14	15–18	15 through 30.
30-day	Days 27–29	30–33	31 through 60.
60-day	Days 57–59	60–63	61 through 90.
90-day	Days 87–89	90–93	91 through 100.
Unscheduled PPS assessments			
Start of Therapy OMRA ..	5–7 days after the start of therapy		Date of the first day of therapy through the end of the standard payment period.
End of Therapy OMRA	1–3 days after all therapy has ended		First non-therapy day through the end of the standard payment period.
Change of Therapy OMRA.	Day 7 (last day) of the COT observation period		The first day of the COT observation period until End of standard payment period, or until interrupted by the next COT–OMRA assessment or scheduled or unscheduled PPS Assessment.
Significant Change in Status Assessment.	No later than 14 days after significant change identified		ARD of Assessment through the end of the standard payment period.

An issue which has been raised in the past with regard to the existing SNF PPS

assessment schedule is that the sheer number of assessments, as well as the

complex interplay of the assessment rules, significantly increases the

administrative burden associated with the SNF PPS. Case-mix classification under the RCS–I model under consideration relies to a much lesser extent on characteristics that may change very frequently over the course of a resident’s stay (for example, therapy minutes may change due to resident refusal or unexpected changes in resident status), but instead relies on more stable predictors of resource utilization by tying case-mix classification, to a much greater extent, to resident characteristics such as diagnosis information. In view of the greater reliance of the RCS–I case-mix classification system under consideration (as compared to the RUG–IV model) on resident characteristics that are relatively stable over a stay and our general focus on reducing administrative burden for providers across the Medicare program, if we were to implement the RCS–I model, we are considering the possibility of reducing the administrative burden on providers by concurrently revising the assessments that would be required under the RCS–I model. Specifically, we are considering the possibility of using the 5-day SNF PPS scheduled assessment to classify a resident under the RCS–I model under consideration for payment purposes for the entirety of his or her Part A SNF stay, except as described below. If we were to finalize this policy, we would revise the regulations at § 413.343(b) so that such regulations would no longer reflect the RUG–IV assessment schedule.

We understand that Medicare beneficiaries are each unique and can experience clinical changes which may require a SNF to reassess the resident to capture significant changes in the resident’s condition. Therefore, to allow

SNFs to capture these types of significant changes, under the RCS–I model we are considering, we would permit providers to reclassify residents from the initial 5-day classification using the Significant Change in Status Assessment (SCSA), which is a Comprehensive assessment (that is, an MDS assessment which includes both the completion of the MDS, as well as completion of the Care Area Assessment (CAA) process and care planning), but only in cases where the criteria for a significant change are met. A “significant change,” according to the MDS manual, is a major decline or improvement in a resident’s status that: (1) Will not normally resolve itself without intervention by staff or by implementing standard disease-related clinical interventions, and is not “self-limiting” (for declines only); (2) Affects more than one area of the resident’s health status; and (3) Requires interdisciplinary review and/or revision of the care plan. See the regulations at 42 CFR 483.20(b)(2)(ii), and the MDS 3.0 RAI Manual, Chapter 2.6.

In addition to providing for the completion of the SCSA, as described above, we have also considered the implications of a SNF completing an SCSA on the variable per diem adjustment schedule described in section III.B.4. of this ANPRM. More specifically, we have considered whether an SNF completing an SCSA should cause a reset in the variable per diem adjustment schedule for the associated resident. While we do believe that a significant change may be sufficient to cause a change in the resident’s RCS–I classification, we do not believe that, in most instances, such a change would require a SNF to expend all of the resources that would be

necessary to treat an individual who initially presented with that condition at admission. Furthermore, we are concerned that by providing for the variable per diem adjustment schedule to be reset after an SCSA is completed, providers may be incentivized to conduct multiple SCSAs during the course of a resident’s stay to reset the variable per diem adjustment schedule each time the adjustment is reduced. Therefore, in cases where an SCSA is completed, we are considering an approach in which this assessment could reclassify the resident for payment purposes as outlined in Table 17, but the resident’s variable per diem adjustment schedule would continue rather than being reset on the basis of completing the SCSA.

Finally, under the RCS–I model we are considering, SNFs would continue to be required to complete a PPS Discharge Assessment. In addition, we are considering the possibility of adding certain items to this PPS Discharge Assessment that would allow CMS to track therapy minutes over the course of a resident’s Part A stay. We believe that the combination of the 5-day Scheduled PPS Assessment, the Significant Change in Status Assessment, and the PPS Discharge Assessment would provide flexibility for providers to capture and report accurately the resident’s condition, as well as accurately reflect resource utilization associated with that resident, while minimizing the administrative burden on providers under the RCS–I model being considered.

Table 17 sets forth the PPS assessment schedule that we are considering, incorporating our ideas above.

TABLE 17—PPS ASSESSMENT SCHEDULE

Medicare MDS assessment schedule type	Assessment reference date	Applicable standard medicare payment days
5-day Scheduled PPS Assessment	Days 1–8	All covered Part A days until Part A discharge (unless a Significant Change in Status assessment is completed).
Significant Change In Status Assessment (SCSA).	No later than 14 days after significant change is identified.	ARD of the assessment through Part A discharge (unless another Significant Change in Status assessment is completed).
PPS Discharge Assessment	Equal to the End Date of the Most Recent Medicare Stay (A2400C).	N/A.

We would note that, as in previous years, we intend to continue to work with providers and software developers in understanding changes we might consider to the MDS. We invite comments on our ideas for revisions to the SNF PPS assessment schedule and related policies as discussed above. We also solicit comment on the extent to

which implementing these ideas would reduce provider burden.

2. Potential Revisions to Therapy Provision Policies Under the SNF PPS

Currently, almost 90 percent of residents in a Medicare Part A SNF stay receive therapy services. Under the current RUG–IV model, therapy services

are case mix-adjusted primarily based on the therapy minutes reported on the MDS. When the original SNF PPS model was developed, most therapy services were furnished on an individual basis, and the minutes reported on the MDS served as a proxy for the staff resource time needed to provide the therapy care. Over the years, we have monitored

provider behavior and have made policy changes as it became apparent that, absent safeguards like quality measurement to ensure that the amount of therapy provided did not exceed the resident's actual needs, there were certain inherent incentives for providers to furnish as much therapy as possible. Thus, for example, in the SNF PPS FY 2010 final rule (74 FR 40315 through 40319), we decided to allocate concurrent therapy minutes for purposes of establishing the RUG-IV group to which the patient belongs, and to limit concurrent therapy to two patients at a time who were performing different activities.

Following the decision to allocate concurrent therapy, using STRIVE data as a baseline, we found two significant provider behavior changes with regard to therapy provision under the RUG-IV payment system. First, there was a significant decrease in the amount of concurrent therapy that was provided in SNFs. Simultaneously, we observed a significant increase in the provision of group therapy, which was not subject to allocation at that time. We concluded that the manner in which group therapy minutes were counted in determining a patient's RUG-IV group created a payment incentive to provide group therapy rather than individual therapy or concurrent therapy, even in cases where individual therapy (or concurrent therapy) was more appropriate for the resident. Thus, we made two policy changes regarding group therapy in the FY 2012 SNF PPS final rule (76 FR 48511 through 48517). We defined group therapy as exactly four residents who are performing the same or similar therapy activities simultaneously. Additionally, we allocated group therapy among the four patients participating in group therapy—meaning that the total amount of time that a therapist spent with a group would be divided by 4 (the number of patients that comprise a group) to establish the RUG-IV group to which the patient belongs.

Since we began allocating group therapy and concurrent therapy, these modes of therapy (group and concurrent) represent less than one percent of total therapy provided to SNF residents. Based on prior experience with the provision of concurrent and group therapy in SNFs, we again are concerned that if we were to implement the RCS-I model we are considering, providers may base decisions regarding the particular mode of therapy to use for a given resident on financial considerations rather than on the clinical needs of SNF residents. Because the RCS-I case-mix model would not

use the minutes of therapy provided to a resident to classify the resident for payment purposes, we are concerned that SNFs may once again become incentivized to emphasize group and concurrent therapy, over the kind of individualized therapy which is tailored to address each beneficiary's specific care needs which we believe is generally the most appropriate mode of therapy for SNF residents.

Since the inception of the SNF PPS, we have limited the amount of group therapy provided to each SNF Part A resident to 25 percent of the therapy provided to them. As stated in the FY 2000 final rule (64 FR 41662):

Although we recognize that receiving PT, OT, or ST as part of a group has clinical merit in select situations, we do not believe that services received within a group setting should account for more than 25 percent of the Medicare resident's therapy regimen during the SNF stay. For this reason, no more than 25 percent of the minutes reported in the MDS may be provided within a group setting. This limit is to be applied for each therapy discipline; that is, only 25 percent of the PT minutes reported in the MDS may be minutes received in a group setting and, similarly, only 25 percent of the OT, or the ST minutes reported may be minutes received in a group setting.

Although we recognize that group and concurrent therapy may have clinical merit in specific situations, we also continue to believe that individual therapy is generally the best way of providing therapy to a resident because it is most tailored to that specific resident's care needs. As such, we believe that individual therapy should represent at least the majority of the therapy services received by SNF residents. To ensure that SNF residents would receive the majority of therapy services on an individual basis, if we were to implement the RCS-I model, we believe concurrent therapy should be limited to no more than 25 percent of a SNF resident's therapy minutes, consistent with the existing 25 percent limit on group therapy. In combination, these two limits would ensure that at least 50 percent of a resident's therapy minutes are provided on an individual basis. For this reason, and because of the change in how therapy services would be used to classify residents under the RCS-I, and the concern that providers may begin to utilize more group and concurrent therapy due to financial considerations, we are considering setting a 25 percent limit on concurrent therapy, in addition to the 25 percent limit on group therapy that was established at the inception of the SNF PPS. Further, as with current policy as it relates to the group therapy

cap, we are considering making the concurrent therapy limit discipline-specific. For example, if a resident received 800 minutes of physical therapy, no more than 200 minutes of this therapy could be provided on a concurrent basis and no more than 200 minutes of this therapy could be provided on a group basis.

With a 25 percent limit on group therapy and a 25 percent limit on concurrent therapy, providers would be permitted to provide a total of 50 percent of the total therapy furnished to each resident in a mode other than individual therapy. We believe that individual therapy is usually the best mode of therapy provision as it permits the greatest degree of interaction between the resident and therapist, and should therefore represent, at a minimum, the majority of therapy provided to an SNF resident. However, we recognize that, in very specific clinical situations, group or concurrent therapy may be the more appropriate mode of therapy provision, and therefore, we would want to allow providers the flexibility to be able to utilize these modes. We continue to stress that group and concurrent therapy should not be utilized to satisfy therapist or resident schedules, and that all group and concurrent therapy should be well documented in a specific way to demonstrate why they are the most appropriate mode for the resident and reasonable and necessary for his or her individual condition. We have also considered a combined limit on both concurrent and group therapy of 25 percent, but believe that this may not afford sufficient flexibility to SNFs to provide services as appropriate given the needs of the resident. We invite comments on the ideas discussed here and other ways in which these limits may be applied.

3. Interrupted Stay Policy

Under section 1812(a)(2)(A) of the Act, Medicare Part A covers a maximum of 100 days of SNF services per spell of illness, or "benefit period". A benefit period starts on the day the beneficiary begins receiving inpatient hospital or SNF benefits under Medicare Part A. (See section 1861(a) of the Act; § 409.60). SNF coverage also requires a prior qualifying, inpatient hospital stay of at least 3 consecutive days' duration (counting the day of inpatient admission but not the day of discharge). (See section 1861(i) of the Act; § 409.30(a)(1)). Once the 100 available days of SNF benefits are used, the current benefit period must end before a beneficiary can renew SNF benefits under a new benefit period. For the

current benefit period to end so a new benefit period can begin, a period of 60 consecutive days must elapse throughout which the beneficiary is neither an inpatient of a hospital nor receiving skilled care in a SNF. (See section 1861(a) of the Act; § 409.60). Once a benefit period ends, the beneficiary must have another qualifying 3-day inpatient hospital stay and meet the other applicable requirements before Medicare Part A coverage of SNF care can resume. (See section 1861(i); § 409.30)

While the majority of SNF benefit periods, approximately 77 percent, involve a single SNF stay, it is possible for a beneficiary to be readmitted multiple times to a SNF within a single benefit period, and such cases represent the remaining 23 percent of SNF benefit periods. For instance, a resident can be readmitted to a SNF within 30 days after a SNF discharge without requiring a new qualifying 3-day inpatient hospital stay or beginning a new benefit period. SNF admissions that occur between 31 and 60 days after a SNF discharge require a new qualifying 3-day inpatient hospital stay, but fall within the same benefit period. (See sections 1861(a) and (i) of the Act; §§ 409.30, 409.60)

Other Medicare post-acute care (PAC) benefits have “interrupted stay” policies that provide for a payment adjustment when the beneficiary temporarily goes to another setting, such as an acute care hospital, and then returns within a specific timeframe. In the inpatient rehabilitation facility (IRF) and inpatient psychiatric facility (IPF) settings, for instance, an interrupted stay occurs when a patient returns to the same facility within 3 days of discharge. The interrupted stay policy for long-term care hospitals (LTCHs) is more complex, consisting of several policies depending on the length of the interruption and, at times, the discharge destination: An interruption of 3 or fewer days is always treated as an interrupted stay, which is similar to the IRF PPS and IPF PPS policies; if there is an interruption of more than 3 days, the length of the gap required to trigger a new stay varies depending on the discharge setting. In these three settings, when a beneficiary is discharged and returns to the facility within the interrupted stay window, Medicare treats the two segments as a single stay.

While other PAC benefits have interrupted stay policies, the SNF benefit under the RUG-IV case-mix model has had no need for such a policy because given a resident’s case-mix group, payment does not change over the course of a stay. In other words, assuming no change in a patient’s

condition or treatment, the payment rate is the same on Day 1 of a covered SNF stay as it is at Day 7. Accordingly, a beneficiary’s readmission to the SNF—even if only a few days may have elapsed since a previous discharge—could essentially be treated as a new and different stay without affecting the payment rates.

However, as discussed in section III.B.4 of this ANPRM, under the RCS-I case-mix model, we are considering adjusting the PT/OT and NTA components of the per diem rate across the length of a stay (the variable per diem adjustment) to better reflect how and when costs are incurred and resources used over the course of the stay, such that earlier days in a given stay receive higher payments, with payments trending lower as the stay continues. In other words, the adjusted payment rate on Day 1 and Day 7 of a SNF stay would not be the same. Although we believe this variable per diem adjustment schedule more accurately reflects the increased resource utilization in the early portion of a stay for *single-stay benefit periods* (which represent the majority of cases), we have considered whether and how such an adjustment should be applied to payment rates for cases involving multiple stays per benefit period. In other words, if a resident has a Part A stay in a SNF, leaves the facility for some reason, and then is readmitted to the same SNF or a different SNF, we have considered how this readmission should be viewed in terms of both resident classification and the variable per diem adjustment schedule under the RCS-I model under consideration. Application of the variable per diem adjustment is of particular concern because providers may consider discharging a resident and then readmitting the resident shortly thereafter to reset the resident’s variable per diem adjustment schedule and maximize the payment rates for that resident.

Given the potential harm which may be caused to the resident if discharged inappropriately, and other concerns outlined above, we are considering the possibility of adopting an interrupted stay policy under the SNF PPS, in conjunction with the implementation of the RCS-I case-mix model. Specifically, as further explained below, in cases where a resident is discharged from a SNF and returns to the same SNF within 3 calendar days after having been discharged, we are considering the possibility of treating the resident’s stay as a continuation of the previous stay for purposes of both resident classification and the variable per diem

adjustment schedule. In cases where the resident is readmitted to the same SNF *more than 3 calendar days* after having been discharged, or in any case where the resident is readmitted to a different SNF, we are considering the possibility of treating the readmission as a new stay, in which the resident would receive a new 5-day assessment upon admission and the variable per diem adjustment schedule for that resident would reset to Day 1. For the purposes of the interrupted stay policy, the source of the readmission would not be relevant. That is, the beneficiary may be readmitted from the community, from an intervening hospital stay, or from a different kind of facility and the interrupted stay policy would operate in the same manner. The only relevant factors in determining if the interrupted stay policy would apply are the number of days between the resident’s discharge from a SNF and subsequent readmission to a SNF, and whether the resident is readmitted to the same or a different SNF.

Consider the following examples, which we believe aid in clarifying how this policy would be implemented:

Example A: A beneficiary is discharged from a SNF stay on Day 3 of admission. Four days after the date of discharge, the beneficiary is then readmitted (as explained above, this readmission would be in the same benefit period). The SNF would conduct a new 5-day assessment at the start of the second admission and reclassify the beneficiary accordingly. In addition, for purposes of the variable per diem adjustment schedule, the payment schedule for the second admission would reset to Day 1 payment rates for the beneficiary’s new case-mix classification.

Example B: A beneficiary is discharged from a SNF stay on Day 7 and is readmitted to the same SNF before midnight of the date 3 calendar days from the day of discharge. For the purposes of classification and payment, this would be considered a continuation of the previous stay (an interrupted stay). The SNF would not conduct a new assessment to reclassify the patient and for purposes of the variable per diem adjustment schedule, the payment schedule would continue where it left off; in this case, the first day of the second stay would be paid at the Day 8 per diem rates under that schedule.

We have also considered alternatives ways of structuring the interrupted stay policy. For example, we have considered possible ranges for the interrupted stay window other than the three calendar day window discussed in this ANPRM. For example, we considered windows of fewer than 3

days (for example, 1 or 2 day windows for readmission) as well as windows of more than 3 days (for example, 4 or 5 day windows for readmission). However, we believe that 3 days represents a reasonable window after which it is more likely that a resident's condition and resource needs will have changed. We also believe that consistency with other payment systems, like that of IRF and IPF, is helpful in providing clarity and consistency to providers in understanding Medicare payment systems, as well as making progress toward standardization among PAC payment systems. We invite comments on the appropriate length of the window for an interrupted stay policy.

In addition, to determine how best to operationalize an interrupted stay policy within the SNF setting, we have considered three broad categories of benefit periods consisting of multiple stays. The first type of scenario, SNF-to-SNF transfers, is one in which a resident is transferred directly from one SNF to a different SNF. The second case we have considered, and the most common of all three multiple-stay benefit period scenarios, is a benefit period that includes a readmission following a new hospitalization between the two stays—for instance, a resident who was discharged from a SNF back to the community, re-hospitalized at a later date, and readmitted to a SNF (the same SNF or a different SNF) following the new hospital stay. The last case we have considered was a readmission to the same SNF or a different SNF following a discharge to the community, with no intervening re-hospitalization. Since benefit periods with exactly two stays account for a large majority of all benefit periods with multiple stays, we primarily examined benefit periods with two stays. Of these cases, over three quarters (76.4 percent) consist of re-hospitalization and readmission (to the same SNF or a different SNF). Community discharge and readmission without re-hospitalization cases represent approximately 14 percent of cases, while direct SNF-to-SNF transfers represent approximately 10 percent.

For each of these case types, in which a resident was readmitted to a SNF no more than 3 days after discharge, we examined whether (1) the variable per diem adjustment schedule should be “reset” back to the Day 1 rates at the outset of the second stay versus “continuing” the variable per diem adjustment schedule at the point at which the previous stay ended, and (2) a new 5-day assessment and resident classification should be required at the

start of the second, or other subsequent, SNF stay.

With regard to the first question above, specifically whether or not a re-admission to a SNF no more than three calendar days after discharge from that SNF would reset the resident's variable per diem adjustment schedule, in each of the cases described above, we were concerned generally that an interrupted stay policy that “restarts” the variable per diem adjustment schedule to Day 1 after readmissions could incentivize unnecessary discharges with quick readmissions. This concern is particularly notable in the second and third cases described above, as the beneficiary may return to the same facility. Regression analyses showed that the second stay following a direct SNF-to-SNF transfer had similar costs to the first stay in a benefit period. As a result, the first case described above was excluded from the interrupted stay policy, which is restricted to readmissions to the same SNF. These types of transfers were also excluded from the interrupted stay policy because including such stays could potentially incentivize frequent discharge and readmission issues among facilities that share common ownership. In the second and third cases, the second stay tended to have lower costs than the first stay, suggesting that it is reasonable not to reset the resident's variable per diem adjustment schedule to address the incentive concerns described above.

With regard to the first question above, we examined changes in costs from the first to second admission for the three scenarios described above (SNF-to-SNF direct transfers, readmissions following re-hospitalization, and readmissions following community discharge). Regression analyses showed that costs from the first to second admission were similar for SNF-to-SNF transfers and slightly lower for readmissions following re-hospitalizations. For readmissions following community discharges, costs were notably lower when residents returned to the same provider but similar when residents were admitted to a different facility. Because these results showed that an admission to a different SNF, regardless of the length of the gap between discharge and readmission, resulted in similar costs to the first admission, we are considering the possibility of always resetting the variable per diem adjustment schedule to Day 1 whenever residents are discharged and readmitted to a different SNF. We acknowledge that this could lead to patterns of inappropriate readmission that could be inconsistent with the intent of this

policy; for example, we would be concerned about patients in SNF A consistently being admitted to SNF B to the exclusion of other SNFs in the area. However, because of the concern that a SNF provider could discharge and promptly readmit a resident to reset the variable per diem adjustment schedule to Day 1, in cases where a resident returns to the same provider we are considering allowing the payment schedule to reset only when the resident has been out of the facility for at least 3 days. More information on these analyses can be found in section 3.10.3 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>.

With regard to the question of whether or not SNFs would be required to complete a new 5-day assessment and reclassify the resident after returning to the SNF no more than 3 calendar days after discharge from the SNF, we investigated changes in resident characteristics from the first to the second stay within a benefit period. First, we looked at changes in clinical categories from the first to second stay for residents with an intervening re-hospitalization. This analysis could only be conducted for residents with a re-hospitalization because, as described in section 3.10.2 of the SNF PMR technical report, for research purposes classification into clinical categories was based on the diagnosis from the prior inpatient stay. Both SNF-to-SNF direct transfers and residents readmitted after a community discharge lacked a new hospitalization that would allow them to change clinical categories. (As described in section III.B.3.b of the ANPRM, classification into clinical categories would be operationalized under the RCS-I model under consideration using the primary diagnosis from item I8000 on the MDS 3.0. This information is not currently available; therefore, we used the prior inpatient diagnosis for research purposes.) For those residents who had a re-hospitalization and therefore could be reclassified into a new clinical category, we found that the vast majority fell into either the same category as in their first stay or the lowest-payment clinical category (medical management). For residents without a re-hospitalization between discharge and readmission, we examined changes in functional status from the first to second stay. Specifically, we looked at whether the RCS-I PT/OT group into which they were classified based on the 5-day

assessment of the second stay was associated with higher or lower functional status relative to the PT/OT group they were placed in based on the 5-day assessment of the first stay. We found that a large majority of these residents were classified into PT/OT groups associated with the same functional status across the first and second stays. More information on these analyses can be found in section 3.10.2 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>. Additionally, we note that under the approach discussed in section III.C.1 of this ANPRM, providers would be afforded the flexibility to use the SCISA, which would allow for reclassification in cases where a SCISA is warranted. Thus, we believe it would be appropriate to maintain the classification from the first stay for those residents returning to the SNF no more than 3 calendar days after discharge from the same facility.

We invite comments on our ideas above.

D. Relationship of RCS-I to Existing Skilled Nursing Facility Level of Care Criteria

Since the case-mix adjustment aspect of the SNF PPS has been based, in part, on the beneficiary's need for skilled nursing care and therapy, we have coordinated claims review procedures with the existing resident assessment process and case-mix classification system. This approach includes an administrative presumption that utilizes a beneficiary's initial classification in one of the upper 52 RUGs of the existing 66-group RUG-IV system to assist in making certain SNF level of care determinations.

We are considering the possibility of adopting a similar approach under the RCS-I case-mix classification model, by retaining an administrative presumption mechanism that would utilize a beneficiary's initial classification into one of the designated upper groups to assist in making certain SNF level of care determinations. This designation would reflect an administrative presumption under the RCS-I model that beneficiaries who are correctly assigned to one of the designated groups on the initial 5-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to and including the assessment reference date on the 5-day Medicare required assessment.

As under the existing administrative presumption, a beneficiary who is not assigned to one of the designated groups

would not automatically be classified as either meeting or not meeting the definition, but instead would receive an individual level of care determination using the existing administrative criteria. This presumption would recognize the strong likelihood that beneficiaries assigned to one of the designated upper groups during the immediate post-hospital period require a covered level of care, which would be less likely for those beneficiaries assigned to one of the lower groups.

We note that the most direct crosswalk between the existing RUG-IV model and the RCS-I model under consideration would involve nursing services, for which each resident would be classified into one of the 43 existing non-rehabilitation RUG-IV groups. Under the approach being considered, effective in conjunction with the implementation of the RCS-I model, the administrative presumption would continue to apply to those of the 43 groups that currently comprise the designated nursing categories under the existing RUG-IV model:

- Extensive Services;
- Special Care High;
- Special Care Low; and,
- Clinically Complex.

In addition, along with the continued use of the remaining, nursing portion of the RUG-IV model, we also are considering the possibility of applying the administrative presumption using those other classifiers under the RCS-I model under consideration that we believe would relate the most directly to a given patient's acuity. As explained below, we would designate such classifiers for this purpose based on their ability to fulfill the administrative presumption's role as described in the FY 2000 SNF PPS final rule—that is, to identify those “. . . situations that involve a high probability of the need for skilled care . . . when taken in combination with the characteristic tendency . . . for an SNF resident's condition to be at its most unstable and intensive state at the outset of the SNF stay” (64 FR 41668 through 41669, July 30, 1999).

Specifically, we are considering the possibility of utilizing the PT/OT component's functional score, as well as the NTA component's comorbidity score for this purpose, which would be effective in conjunction with the implementation of the RCS-I model. Under this approach, those residents not classifying into one of the designated nursing RUG categories under the RCS-I model under consideration on the initial, 5-day Medicare-required assessment could nonetheless still qualify for the administrative

presumption on that assessment, either by receiving the most intensive functional score (14 to 18) under the PT/OT component, or by receiving the uppermost comorbidity score (11+) under the NTA component. We believe that these particular clinical indicators would appropriately serve to fulfill the administrative presumption's role of identifying those cases with the highest probability of requiring an SNF level of care throughout the initial portion of the SNF stay. We note that to help improve the accuracy of these newly-designated groups in serving this function, we would continue to review the new designations going forward and could make further adjustments to the designations over time as we gain actual operating experience under the new classification model.

We note that affording a streamlined and simplified administrative procedure for readily identifying such cases has been the basic purpose of the SNF PPS's level of care presumption ever since its inception. In this context, we wish to reiterate that an individual beneficiary's inability to qualify for the administrative presumption would not in itself serve to disqualify that resident from receiving SNF coverage. Instead, as we have noted repeatedly in previous rulemaking, while such residents are not automatically presumed to require a skilled level of care, neither are they automatically classified as requiring nonskilled care. Rather, any resident who does not qualify for the presumption would instead receive an individual level of care determination using the existing administrative criteria. As we explained in the FY 2016 SNF PPS final rule, this approach serves “. . . specifically to ensure that the presumption does not disadvantage such residents, by providing them with an individualized level of care determination that fully considers all pertinent factors” (80 FR 46406, August 4, 2015).

We invite comments on the ideas and the approach we are considering, as discussed above.

E. Effect of RCS-I on Temporary AIDS Add-on Payment

Section 511(a) of the MMA amended section 1888(e)(12) of the Act to provide for a temporary increase of 128 percent in the PPS per diem payment for any SNF residents with Acquired Immune Deficiency Syndrome (AIDS), effective with services furnished on or after October 1, 2004. This special add-on for SNF residents with AIDS was intended to be of limited duration, as the MMA legislation specified that it was to remain in effect only until the Secretary

certifies that there is an appropriate adjustment in the case mix to compensate for the increased costs associated with such residents.

The temporary add-on for SNF residents with AIDS is also discussed in Program Transmittal #160 (Change Request #3291), issued on April 30, 2004, which is available online at www.cms.gov/transmittals/downloads/r160cp.pdf. In the SNF PPS final rule for FY 2010 (74 FR 40288, August 11, 2009), we did not address this certification in that final rule's implementation of the case-mix refinements for RUG-IV, thus allowing the add-on payment required by section 511 of the MMA to remain in effect for the time being.

In the House Ways and Means Committee Report that accompanied the MMA, the explanation of the MMA's temporary AIDS adjustment notes the following under *Reason for Change*: "According to prior work by the Urban Institute, AIDS patients have much higher costs than other patients in the same resource utilization groups in skilled nursing facilities. The adjustment is based on that data analysis" (H. Rep. No. 108-178, Part 2 at 221). The data analysis from that February 2001 Urban Institute study (entitled "Medicare Payments for Patients with HIV/AIDS in Skilled Nursing Facilities"), in turn, had been conducted under a Report to Congress mandated under a predecessor provision, section 105 of the BBRA. This earlier BBRA provision, which ultimately was superseded by the MMA's temporary AIDS add-on provision, had amended section 1888(e)(12) of the Act to provide for "Special consideration for facilities serving specialized patient populations" (that is, those who are "immunocompromised secondary to an infectious disease, with specific diagnoses as specified by the Secretary).

We note that at this point, over 15 years have elapsed since the Urban Institute conducted its study on AIDS patients in SNFs, a period that has seen major advances in the state of medical practice in treating this condition. These advances have notably included the introduction of powerful new drugs and innovative prescription regimens that have dramatically improved the ability to manage the viral load (the amount of human immunodeficiency virus (HIV) in the blood). The decrease in viral load secondary to medications has contributed to a shift from intensive nursing services for AIDS-related illnesses to an increase in antiretroviral therapy. This phenomenon, in turn, is reflected in a recent analysis of

differences in SNF resource utilization, which indicates that while the overall historical disparity in costs between AIDS and non-AIDS patients has not entirely disappeared, that disparity is now far greater with regard to drugs than it is for nursing. Specifically, NTA costs per day for residents with AIDS were 151 percent higher than those for other residents, while the difference in wage-weighted nursing staff time between the two groups was only 19 percent. More information on this analysis can be found in section 3.8.3 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>.

As discussed previously in section III.B.3.e. of this ANPRM, the RCS-I model would include an NTA adjustment that we believe appropriately takes into account and compensates for those NTA costs, including drugs, which specifically relate to residents with AIDS. Regression analysis indicated that the case-mix adjustment for AIDS in the NTA component successfully accounts for the increased NTA resource utilization for residents with AIDS. Additionally, this analysis indicated that the case-mix adjustment of the NTA component accounts for most of the current disparity in payments between these and other residents, as suggested by a comparison of payments in RUG-IV and payments in RCS-I for residents with and without AIDS. More information on these analyses can be found in section 3.8.2 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>. Therefore, if we were to implement the RCS-I model we are considering, we believe it would be appropriate to issue the prescribed certification under section 511(a) of the MMA on the basis of the RCS-I model's NTA adjustment alone, as effectively representing the required appropriate adjustment in the case mix to compensate for the increased costs associated with such residents. However, to further ensure that the RCS-I model under consideration would account as fully as possible for any remaining disparity with regard to nursing costs, as discussed in section III.B.3.d., we are additionally considering the possibility of including a specific AIDS adjustment as part of the case-mix adjustment of the nursing component. As discussed in section III.B.3.d. of this ANPRM, we used the STRIVE data to quantify the effects of HIV/AIDS diagnosis on nursing resource

use. Regression analyses found that wage-weighted nursing staff time is 19 percent higher for residents with HIV/AIDS, controlling for the non-rehabilitation RUG of the resident. More information on this analysis can be found in section 3.8.2 of the SNF PMR technical report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>. Thus, we are considering a 19 percent increase in payment for the nursing component for residents with HIV/AIDS under the RCS-I model under consideration to account for the increased nursing costs for such residents. Similar to the NTA adjustment for residents with HIV/AIDS discussed in section III.B.3.e. of this ANPRM, this adjustment would be identified by ICD-10-CM code B20 on the SNF claim and would be processed through the PRICER software used by CMS to set the appropriate payment rate for a resident's SNF stay. The 19 percent adjustment would be applied to the unadjusted base rate for the nursing component, and then this amount would be further case-mix adjusted per the resident's RCS-I classification.

We believe that when taken collectively, these adjustments under the RCS-I case mix model that we discuss here would appropriately serve to justify issuing the certification prescribed under section 511(a) of the MMA effective with the conversion to the RCS-I model, which would permit the MMA's existing, temporary AIDS add-on to be replaced by a permanent adjustment in the case mix (under the RCS-I case mix model) that appropriately compensates for the increased costs associated with these residents. We invite comments on the ideas and the approach we are considering, as discussed above.

F. Potential Impacts of Implementing RCS-I

To assess the potential effect of implementing the RCS-I case mix model, this section outlines the projected impacts of implementing this new case-mix classification model under the SNF PPS. The impacts presented here assume implementation of the RCS-I case-mix model and associated policy ideas discussed throughout section III. of this ANPRM.

The impact analysis presented here makes a series of other assumptions as well, on all of which we solicit comment regarding their appropriateness. First, the impacts presented here assume consistent provider behavior in terms of how care is provided under RUG-IV and how care might be provided under RCS-I, as

we do not make any attempt to anticipate or predict provider reactions to the implementation of RCS-I. That being said, we acknowledge the possibility that implementing the RCS-I model could substantially affect resident care. Most notably, based on the concerns raised during a number of TEPs, we acknowledge the possibility that, as therapy payments under RCS-I would not have the same connection to service provision as they do under RUG-IV, it is possible that some providers may choose to reduce their provision of therapy services to increase margins under RCS-I. Additionally, we acknowledge that a number of states utilize some form of the RUG-IV case-mix classification system as part of their Medicaid programs and that any change in Medicare policy can have an impact on state programs. We solicit comments on this assumption that behavior would remain unchanged under RCS-I. To the extent that commenters may believe that behavior could change under RCS-I, we would ask that the commenters describe the types of behavioral changes we should expect. Additionally, we solicit comments on what type of impact on states we should expect from implementing the revisions considered in this ANPRM.

Another assumption made for these impacts is that, as with prior system transitions, we would implement the RCS-I case-mix system, along with the other policy changes discussed in section III of this ANPRM, in a budget neutral manner through application of a parity adjustment to the case-mix weights under the RCS-I model under consideration, as further discussed below. We make this assumption because, as with prior system transitions, in considering changes to the case-mix methodology, we do not intend to change the aggregate amount of Medicare payments to SNFs, but rather to utilize a case-mix methodology to classify residents in such a manner as to best ensure that payments made for specific residents are an accurate reflection of resource utilization without introducing potential incentives which could incentivize inappropriate care delivery, as we believe may exist under the current case-mix methodology.

However, as we would not be required to implement RCS-I in a budget neutral manner, we solicit comment on whether we should consider implementing RCS-I in a manner that is not budget neutral.

For illustrative purposes, the impact analysis presented here assumes implementation of these changes in a budget neutral manner without a behavioral change. The prior sections describe how case-mix weights are set to reflect relative resource use for each case-mix group. RCS-I payment before application of a parity adjustment is calculated using the unadjusted CMI for each component, the variable per diem payment adjustment schedule, the different base rates for urban and rural facilities, the labor-related share, and the geographic wage indexes. In applying a parity adjustment to the case-mix weights, we maintained the relative value of each CMI, but multiplied every CMI by a ratio to achieve parity in overall SNF PPS payments under the RCS-I case-model and under the RUG-IV case-mix model. The multiplier is calculated through the following steps. First, we calculate total payment subtracted by pre-AIDS adjusted non-case mix payment under RUG-IV. Second, we calculate what total payment would have been under RCS-I before application of the parity adjustment. Third, we subtract non-case-mix component payments from both calculations, as this component does not change across systems. This subtraction does not include the temporary add-on for residents with HIV/AIDS in the RUG-IV system, therefore ensuring that the amount subtracted is the same for both RUG-IV and potential RCS-I payments, given the replacement of the temporary add-on described in section III.E. Lastly, we divide the remaining total RUG-IV payments over the remaining total RCS-I payments prior to the parity adjustment. This division yields a ratio (parity adjustment) by which the RCS-I CMIs are multiplied so that total estimated payments under the RCS-I model under consideration would be equal to total estimated payments under RUG-IV, assuming no changes in the population, provider behavior, and coding. More details regarding this

calculation and analysis are described in section 3.12 of the SNF PMR Technical Report. The impact analysis presented in this section focuses on how payments under the RCS-I model under consideration would be re-allocated across different resident groups and among different facility types, assuming implementation in a budget neutral manner. We invite comments on this discussion and approach.

The projected resident-level impacts are presented in Table 18. The first column identifies different resident subpopulations and the second column shows what percent of SNF stays are represented by the given subpopulation. The third column shows the average change in payment for residents in a given subpopulation, represented as a percentage change from payments made for that subpopulation under RUG-IV versus those which would be made under the RCS-I model under consideration. Positive changes in this column represent a projected positive shift in payments for that subpopulation under the RCS-I model under consideration, while negative changes in this column represent projected negative shifts in payment for that subpopulation. More information on the construction of current payments under RUG-IV and payments under the RCS-I model for purposes of this impact analysis can be found in section 3.13 of the SNF PMR Technical Report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPSP/therapyresearch.html>. Based on the data presented in Table 18, we observe that the most significant shift in payments created by implementation of the RCS-I case-mix model would be to redirect payments away from residents who are receiving very high amounts of therapy under the current SNF PPS (which strongly incentivizes the provision of therapy) to residents with more complex clinical needs. Other resident types that may see higher relative payments under the RCS-I system are residents with high NTA costs, dual-eligible residents, residents with ESRD, and residents with longer qualifying inpatient stays.

TABLE 18—RCS-I IMPACT ANALYSIS, RESIDENT-LEVEL

Resident characteristics	Percent of stays	Percent change
All stays	100.0	0.0
Sex:		
Female	62.1	-0.7
Male	37.9	1.2
Age:		
<65 years	9.6	5.4

TABLE 18—RCS—I IMPACT ANALYSIS, RESIDENT-LEVEL—Continued

Resident characteristics	Percent of stays	Percent change
65–74 years	21.3	2.7
75–84 years	34.0	–0.3
85–89 years	19.3	–2.3
90+ years	15.7	–2.8
Race/Ethnicity:		
White	85.2	–0.1
Black	10.6	0.4
Hispanic	1.6	–0.2
Asian	1.2	–0.8
Native American	0.4	6.6
Other or unknown	1.1	0.7
Medicare/Medicaid Dual Status:		
Dually enrolled	35.2	2.9
Not dually enrolled	64.8	–1.9
Original Reason for Medicare Enrollment:		
Aged	76.6	–1.2
Disabled	22.5	3.9
ESRD	0.9	10.0
Unknown	0.0	–3.3
Number of Utilization Days:		
1–15 days	33.3	15.9
16–30 days	31.6	0.6
31+ days	35.1	–2.5
Number of Utilization Days = 100:		
No	97.4	0.3
Yes	2.6	–2.7
Length of Qualifying Inpatient Stay:		
3 days	22.5	–2.3
4–30 days	73.6	0.5
31+ days	1.8	4.6
Presence of Complications in MS–DRG of Qualifying Inpatient Stay:		
No Complication	37.9	–2.3
CC/MCC	62.1	1.4
Stroke:		
No	87.5	–0.1
Yes	12.5	0.7
CFS Level:		
Cognitive Intact	54.3	–0.5
Mildly Impaired	22.8	1.6
Moderately Impaired	18.2	–1.8
Severely Impaired	4.6	6.1
HIV:		
No	99.7	0.2
Yes	0.3	–40.0
IV Medication:		
No	91.4	–2.0
Yes	8.6	22.9
Diabetes:		
No	65.0	–2.8
Yes	35.0	5.2
Wound Infection:		
No	97.8	–0.4
Yes	2.2	17.9
Amputation/Prosthesis Care:		
No	100.0	0.0
Yes	0.0	4.7
Most Common Therapy Level:		
RU	54.0	–9.1
RV	22.7	9.3
RH	7.7	24.4
RM	3.7	36.9
RL	0.1	49.3
Non-Rehabilitation	11.7	44.5
Number of Therapy Disciplines Used:		
0	5.4	20.0
1	3.3	37.3
2	51.4	1.6
3	39.9	–3.9
Physical Therapy Utilization:		
No	7.3	24.2
Yes	92.7	–1.0

TABLE 18—RCS—I IMPACT ANALYSIS, RESIDENT-LEVEL—Continued

Resident characteristics	Percent of stays	Percent change
Occupational Therapy Utilization:		
No	8.6	24.8
Yes	91.4	-1.2
Speech Language Pathology Utilization:		
No	58.4	3.2
Yes	41.6	-3.1
Therapy Utilization:		
PT+OT+SLP	39.9	-3.9
PT+OT Only	50.4	1.2
PT+SLP Only	0.6	22.9
OT+SLP Only	0.5	25.6
PT Only	1.9	34.9
OT Only	0.7	41.8
SLP Only	0.7	39.2
Non-therapy	5.4	20.0
NTA Costs:		
\$0-\$10	10.9	-2.6
\$10-\$50	44.1	-3.2
\$50-\$150	32.1	3.5
\$150+	9.4	19.2
Unknown	3.5	3.3
Extensive Services Level:		
Tracheostomy and Ventilator/Respirator	0.4	18.1
Tracheostomy or Ventilator/Respirator	0.6	3.1
Infection Isolation	1.3	8.9
Neither	97.8	-0.3

Projected facility-level impacts are presented in Table 19. The first column identifies different facility subpopulations and the second column shows the percentage of SNFs represented by the given subpopulation. The third column shows the average change in payment for facilities in a given subpopulation, represented as a percentage change from payments made for that subpopulation under RUG-IV versus those which would be made under the RCS-I model under consideration. Positive changes in this column represent a projected positive shift in payments for that subpopulation

under the RCS-I model under consideration, while negative changes in this column represent projected negative shifts in payment for that subpopulation. More information on the construction of current payments under RUG-IV and payments under the RCS-I model for purposes of this impact analysis can be found in section 3.13 of the SNF PMR Technical Report available at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html>. Based on the data presented in Table 19, we observe that the most significant shift in Medicare

payments created by implementation of the RCS-I case-mix model would be from facilities with a high proportion of rehabilitation residents (more specifically, facilities with high proportions of Ultra-High Rehabilitation residents), to facilities with high proportions of non-rehabilitation residents. Other facility types that may see higher relative payments under the RCS-I system that we describe here are small facilities, non-profit facilities, government-owned facilities, and hospital-based and swing-bed facilities.

TABLE 19—RCS—I IMPACT ANALYSIS, FACILITY-LEVEL

Provider characteristics	Percent of providers	Percent change
All stays	100.0	0.0
Institution type:		
Freestanding	95.0	-0.5
Hospital-Based/Swing Bed	5.0	15.8
Ownership:		
For-profit	71.2	-1.1
Non-profit	23.9	3.1
Government	5.0	7.6
Location:		
Urban	70.6	-0.8
Rural	29.4	3.7
Bed Size:		
0-49	11.2	6.7
50-99	37.1	0.3
100-149	34.3	-0.6
150-199	11.2	-0.5
200+	6.1	-0.7
Census division:		

TABLE 19—RCS—I IMPACT ANALYSIS, FACILITY-LEVEL—Continued

Provider characteristics	Percent of providers	Percent change
New England	6.2	2.1
Middle Atlantic	11.2	-1.3
East North Central	19.9	0.2
West North Central	12.8	6.9
South Atlantic	15.4	-0.8
East South Central	6.6	1.0
West South Central	13.2	-1.5
Mountain	4.7	0.9
Pacific	10.1	-1.3
% of Stays with 100 Utilization Days:		
0–10%	90.4	0.3
10–25%	8.6	-3.2
25–100%	1.0	-3.9
% of Stays with Medicare/Medicaid Dual Enrollment:		
0–10%	8.4	-1.7
10–2%	17.2	-0.7
25–50%	35.5	0.6
50–75%	26.5	0.8
75–90%	8.5	-0.4
90–100%	3.8	-0.5
% of Utilization Days Billed as RU:		
0–10%	12.5	28.4
10–25%	9.8	13.6
25–50%	25.5	5.6
50–75%	37.2	-1.9
75–90%	13.0	-7.1
90–100%	2.1	-9.9
% of Utilization Days Billed as Non-Rehabilitation:		
0–10%	70.4	-2.2
10–25%	23.2	6.3
25–50%	4.6	20.2
50–75%	1.0	45.6
75–90%	0.2	44.8
90–100%	0.7	38.4

In addition to the impacts discussed throughout this section, we would also note that we expect a significant reduction in regulatory burden under the SNF PPS, due to the changes we are considering in the MDS assessment schedule, as discussed above in section III.C.1 of this ANPRM. We invite comments on the impact analysis presented here.

IV. Collection of Information Requirements

This ANPRM solicits comment on several options pertaining to the SNF PPS payment methodology. Since it does not propose any new or revised information collection requirements or burden, it need not be reviewed by the

Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Should the outcome of the ANPRM result in any new or revised information collection requirements or burden, the requirements and burden will be submitted to OMB for approval. Interested parties will also be provided an opportunity to comment on such information through subsequent proposed and final rulemaking documents.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not

able to acknowledge or respond to them individually. We will review all comments we receive by the date and time specified in the **DATES** section of this preamble, as we continue to consider the model presented in this ANPRM.

Dated: April 21, 2017.

Seema Verma

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 21, 2017.

Thomas E. Price

Secretary, Department of Health and Human Services.

[FR Doc. 2017-08519 Filed 4-27-17; 4:15 pm]

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 411, 413 *et al.*

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2018, SNF Value-Based Purchasing Program, SNF Quality Reporting Program, Survey Team Composition, and Proposal To Correct the Performance Period for the NHSN HCP Influenza Vaccination Immunization Reporting Measure in the ESRD QIP for PY 2020; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 411, 413, 424, and 488

[CMS-1679-P]

RIN 0938-AS96

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2018, SNF Value-Based Purchasing Program, SNF Quality Reporting Program, Survey Team Composition, and Proposal To Correct the Performance Period for the NHSN HCP Influenza Vaccination Immunization Reporting Measure in the ESRD QIP for PY 2020

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year (FY) 2018. It also proposes to revise and rebase the market basket index by updating the base year from 2010 to 2014, and by adding a new cost category for Installation, Maintenance, and Repair Services. The rule also includes proposed revisions to the SNF Quality Reporting Program (QRP), including measure and standardized patient assessment data proposals and proposals related to public display. In addition, it includes proposals for the Skilled Nursing Facility Value-Based Purchasing Program that will affect Medicare payment to SNFs beginning in FY 2019 and clarification on the requirements regarding the composition of professionals for the survey team. The proposed rule also seeks to clarify the regulatory requirements for team composition for surveys conducted for investigating a complaint and to align regulatory provisions for investigation of complaints with the statutory requirements. The proposed rule also includes one proposal related to the performance period for the National Healthcare Safety Network (NHSN) Healthcare Personnel (HCP) Influenza Vaccination Reporting Measure included in the End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP).

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 26, 2017.

ADDRESSES: In commenting, please refer to file code CMS-1679-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Within the search bar, enter the Regulation Identifier Number associated with this regulation, 0938-AS96, and then click on the "Comment Now" box

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1679-P, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1679-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Penny Gershman, (410) 786-6643, for information related to SNF PPS clinical issues.

John Kane, (410) 786-0557, for information related to the development of the payment rates and case-mix indexes.

Kia Sidbury, (410) 786-7816, for information related to the wage index.

Bill Ullman, (410) 786-5667, for information related to level of care determinations, consolidated billing, and general information.

Charlayne Van, (410) 786-8659, for information related to skilled nursing facility quality reporting.

James Poyer, (410) 786-2261 and Stephanie Frilling, (410) 786-4507, for information related to the skilled nursing facility value-based purchasing program.

Delia Houseal, (410) 786-2724, for information related to the end-stage renal disease quality incentive program.

Rebecca Ward, (410) 786-1732 and Caecilia Blondiaux, (410) 786-2190, for survey type definitions.

SUPPLEMENTARY INFORMATION: Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

Availability of Certain Tables Exclusively Through the Internet on the CMS Web site

As discussed in the FY 2014 SNF PPS final rule (78 FR 47936), tables setting forth the Wage Index for Urban Areas Based on CBSA Labor Market Areas and the Wage Index Based on CBSA Labor Market Areas for Rural Areas are no

longer published in the **Federal Register**. Instead, these tables are available exclusively through the Internet on the CMS Web site. The wage index tables for this proposed rule can be accessed on the SNF PPS Wage Index home page, at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFFPS/WageIndex.html>.

Readers who experience any problems accessing any of these online SNF PPS wage index tables should contact Kia Sidbury at (410) 786-7816.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

Table of Contents

- I. Executive Summary
- II. Background on SNF PPS
 - A. Statutory Basis and Scope
 - B. Initial Transition for the SNF PPS
 - C. Required Annual Rate Updates
- III. SNF PPS Rate Setting Methodology and FY 2018 Update
 - A. Federal Base Rates
 - B. SNF Market Basket Update
 - C. Case-Mix Adjustment
 - D. Wage Index Adjustment
 - E. Adjusted Rate Computation Example
- IV. Additional Aspects of the SNF PPS
 - A. SNF Level of Care—Administrative Presumption
 - B. Consolidated Billing
 - C. Payment for SNF-Level Swing-Bed Services
- V. Other Issues
 - A. Revising and Rebasings the SNF Market Basket Index
 - B. Skilled Nursing Facility (SNF) Quality Reporting Program (QRP)
 - C. Skilled Nursing Facility Value-Based Purchasing Program (SNF VBP)
 - D. Survey Team Composition
 - E. Proposal to Correct the Performance Period for the National Healthcare Safety Network (NHSN) Healthcare Personnel (HCP) Influenza Vaccination Immunization Reporting Measure in the End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP) for Payment Year (PY) 2020
- VI. Possible Burden Reduction in the Long-Term Care Requirements
- VII. CMMI Solicitation
- VIII. Request for Information on CMS Flexibilities and Efficiencies
- IX. Collection of Information Requirements
- X. Response to Comments
- XI. Economic Analyses Regulation Text

Acronyms

In addition, because of the many terms to which we refer by acronym in this proposed rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

AIDS Acquired Immune Deficiency Syndrome
 ALJ Administrative Law Judge
 ARD Assessment reference date

BBA Balanced Budget Act of 1997, Public Law 105-33
 BBRA Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, Public Law 106-113
 BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Public Law 106-554
 CAH Critical access hospital
 CARE Continuity Assessment Record and Evaluation
 CASPER Certification and Survey Provider Enhanced Reporting
 CBSA Core-based statistical area
 CCN CMS Certification Number
 CFR Code of Federal Regulations
 CMI Case-mix index
 CMS Centers for Medicare & Medicaid Services
 DTI Deep tissue injuries
 FFS Fee-for-service
 FR Federal Register
 FY Fiscal year
 HCPCS Healthcare Common Procedure Coding System
 HIQR Hospital Inpatient Quality Reporting
 HOQR Hospital Outpatient Quality Reporting
 HRRP Hospital Readmissions Reduction Program
 HVBP Hospital Value-Based Purchasing
 ICD-10-CM International Classification of Diseases, 10th Revision, Clinical Modification
 IGI IHS (Information Handling Services) Global Insight, Inc.
 IMPACT Improving Medicare Post-Acute Care Transformation Act of 2014, Public Law 113-185
 IPPS Inpatient prospective payment system
 IRF Inpatient Rehabilitation Facility
 IRF-PAI Inpatient Rehabilitation Facility Patient Assessment Instrument
 LTC Long-term care
 LTCH Long-term care hospital
 MACRA Medicare Access and CHIP Reauthorization Act of 2015, Public Law 114-10
 MAP Measures Application Partnership
 MDS Minimum data set
 MFP Multifactor productivity
 MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173
 MSA Metropolitan statistical area
 NF Nursing facility
 NQF National Quality Forum
 OASIS Outcome and Assessment Information Set
 OBRA 87 Omnibus Budget Reconciliation Act of 1987, Public Law 100-203
 OMB Office of Management and Budget
 PAC Post-acute care
 PAMA Protecting Access to Medicare Act of 2014, Public Law 113-93
 PPS Prospective Payment System
 PQRS Physician Quality Reporting System
 QIES Quality Improvement and Evaluation System
 QIES ASAP Quality Improvement and Evaluation System Assessment Submission and Processing
 QRP Quality Reporting Program
 RAI Resident assessment instrument
 RAVEN Resident assessment validation entry

RFA Regulatory Flexibility Act, Public Law 96-354
 RIA Regulatory impact analysis
 RUG-III Resource Utilization Groups, Version 3
 RUG-IV Resource Utilization Groups, Version 4
 RUG-53 Refined 53-Group RUG-III Case-Mix Classification System
 SCHIP State Children's Health Insurance Program
 SNF Skilled nursing facility
 SNF PMR Skilled Nursing Facility Payment Models Research
 SNF QRP Skilled Nursing Facility Quality Reporting Program
 SNF VBP Skilled Nursing Facility Value-Based Purchasing Program
 SNFPPR Skilled Nursing Facility Potentially Preventable Readmission Measure
 SNFRM Skilled Nursing Facility 30-Day All-Cause Readmission Measure
 STM Staff time measurement
 STRIVE Staff time and resource intensity verification
 TEP Technical expert panel
 UMRA Unfunded Mandates Reform Act, Public Law 104-4
 VBP Value-based purchasing

I. Executive Summary

A. Purpose

This proposed rule would update the SNF prospective payment rates for FY 2018 as required under section 1888(e)(4)(E) of the Social Security Act (the Act). It would also respond to section 1888(e)(4)(H) of the Act, which requires the Secretary to provide for publication in the **Federal Register**, before the August 1 that precedes the start of each fiscal year (FY), certain specified information relating to the payment update (see section II.C. of this proposed rule). This proposed rule also includes proposals that would update the requirements for the Skilled Nursing Facility Quality Reporting Program (SNF QRP), additional proposals for the Skilled Nursing Facility Value-Based Purchasing Program (SNF VBP), and clarification of requirements related to survey team composition and investigation of complaints under §§ 488.30, 488.301, 488.314, and 488.308. The proposed rule also includes one proposal related to the performance period for the National Healthcare Safety Network (NHSN) Healthcare Personnel (HCP) Influenza Vaccination Reporting Measure included in the End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP). Finally, in this proposed rule we will be soliciting comments regarding potential changes to the recently finalized Requirements for Long-Term Care Facilities that would result in a burden reduction if modified or eliminated, as well as potential CMMI models or other

demonstration projects that would reduce cost and increase quality of care for SNF, or more generally Post-Acute Care patients.

B. Summary of Major Provisions

In accordance with sections 1888(e)(4)(E)(ii)(IV) and 1888(e)(5) of the Act, the federal rates in this proposed rule would reflect an update to the rates that we published in the SNF PPS final rule for FY 2017 (81 FR 51970), which reflects the SNF market basket update, as required by section 1888(e)(5)(B)(iii) of the Act for FY 2018. Additionally, in section V.A. of this proposed rule, we propose to revise and rebase the market basket index for FY 2018 and subsequent FYs by updating the base year from 2010 to 2014, and by adding a new cost category for Installation, Maintenance, and Repair Services. We are also proposing additional polices, measures and data reporting requirements for the Skilled Nursing Facility Quality Reporting Program (SNF QRP) and requirements for the SNF VBP Program, including an exchange function to translate SNF performance scores calculated using the program's scoring methodology into value-based incentive payments.

We also propose to clarify the regulatory requirements for team composition for surveys conducted for the purposes of investigating a complaint and on-site monitoring of compliance, and to align the regulatory provisions for special surveys and investigation of complaints with the statute. The proposed changes clarify that the requirement for an interdisciplinary team that must include registered nurse is applicable to surveys conducted under sections 1819(g)(2) and 1919(g)(2) of the Act, and not to those surveys conducted to investigate complaints or to monitor compliance on-site under sections 1819(g)(4) and 1919(g)(4) of the Act. Revising the regulatory language under §§ 488.30, 488.301, 488.308, and 488.314 to correspond to the statutory requirements found in sections 1819(g) and 1919(g) of the Act will add clarity to these requirements by making them more explicit. We also propose to revise the performance period for the National Healthcare Safety Network (NHSN) Healthcare Personnel (HCP) Influenza Vaccination Reporting Measure included in the End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP).

C. Summary of Cost and Benefits

Provision description	Total transfers
Proposed FY 2018 SNF PPS payment rate update.	The overall economic impact of this proposed rule would be an estimated increase of \$390 million in aggregate payments to SNFs during FY 2018.
Proposed FY 2018 Cost to Updating the Quality Reporting Program.	The overall cost for SNFs to submit data for the Quality Reporting Program for the provisions in this proposed rule is \$60 million.

II. Background on SNF PPS

A. Statutory Basis and Scope

As amended by section 4432 of the Balanced Budget Act of 1997 (BBA, Pub. L. 105–33, enacted on August 5, 1997), section 1888(e) of the Act provides for the implementation of a PPS for SNFs. This methodology uses prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services defined in section 1888(e)(2)(A) of the Act. The SNF PPS is effective for cost reporting periods beginning on or after July 1, 1998, and covers all costs of furnishing covered SNF services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities and bad debts. Under section 1888(e)(2)(A)(i) of the Act, covered SNF services include post-hospital extended care services for which benefits are provided under Part A, as well as those items and services (other than a small number of excluded services, such as physicians' services) for which payment may otherwise be made under Part B and which are furnished to Medicare beneficiaries who are residents in a SNF during a covered Part A stay. A comprehensive discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252). In addition, a detailed discussion of the legislative history of the SNF PPS is available online at http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Legislative_History_04152015.pdf.

Section 215(a) of Protecting Access to Medicare Act of 2014 (Pub. L. 113–93, enacted on April 1, 2014) (PAMA) added section 1888(g) to the Act requiring the Secretary to specify an all-cause all-condition hospital readmission measure and a resource use measure, an all-condition risk-adjusted potentially preventable hospital readmission measure, for the SNF setting. Additionally, section 215(b) of PAMA added section 1888(h) to the Act

requiring the Secretary to implement a VBP program for SNFs. Finally, section 2(a) of the Improving Medicare Post-Acute Care Transformation Act of 2014 (Pub. L. 113–185, enacted October 6, 2014) (IMPACT Act) added section 1899B to the Act that, among other things, requires SNFs to report standardized assessment data including such data on quality measures in specified quality measure domains, as well as data on resource use and other domains. In addition, the IMPACT Act added section 1888(e)(6) to the Act, which requires the Secretary to implement a quality reporting program for SNFs, which includes a requirement that SNFs report certain data to receive their full payment under the SNF PPS.

B. Initial Transition for the SNF PPS

Under sections 1888(e)(1)(A) and 1888(e)(11) of the Act, the SNF PPS included an initial, three-phase transition that blended a facility-specific rate (reflecting the individual facility's historical cost experience) with the federal case-mix adjusted rate. The transition extended through the facility's first 3 cost reporting periods under the PPS, up to and including the one that began in FY 2001. Thus, the SNF PPS is no longer operating under the transition, as all facilities have been paid at the full federal rate effective with cost reporting periods beginning in FY 2002. As we now base payments for SNFs entirely on the adjusted federal per diem rates, we no longer include adjustment factors under the transition related to facility-specific rates for the upcoming FY.

C. Required Annual Rate Updates

Section 1888(e)(4)(E) of the Act requires the SNF PPS payment rates to be updated annually. The most recent annual update occurred in a final rule that set forth updates to the SNF PPS payment rates for FY 2017 (81 FR 51970, August 5, 2016).

Section 1888(e)(4)(H) of the Act specifies that we provide for publication annually in the **Federal Register** of the following:

- The unadjusted federal per diem rates to be applied to days of covered SNF services furnished during the upcoming FY.
- The case-mix classification system to be applied for these services during the upcoming FY.
- The factors to be applied in making the area wage adjustment for these services.

Along with other proposed revisions discussed later in this preamble, this proposed rule would provide the

required annual updates to the per diem payment rates for SNFs for FY 2018.

III. SNF PPS Rate Setting Methodology and FY 2018 Update

A. Federal Base Rates

Under section 1888(e)(4) of the Act, the SNF PPS uses per diem federal payment rates based on mean SNF costs in a base year (FY 1995) updated for inflation to the first effective period of the PPS. We developed the federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the federal rates also incorporated a Part B add-on, which is an estimate of the amounts that, prior to the SNF PPS, would have been payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of the PPS (the 15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for geographic variations in wages and for the costs of facility differences in case mix. In compiling the database used to compute the federal payment rates, we excluded those providers that received new provider exemptions from the routine cost limits, as well as costs related to payments for exceptions to the routine cost limits. Using the formula that the BBA prescribed, we set the federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas, and adjusted the portion of the federal rate attributable to wage-related costs by a wage index to reflect geographic variations in wages.

B. SNF Market Basket Update

1. SNF Market Basket Index

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the SNF PPS final rule for FY 2014 (78 FR 47939 through 47946), we revised and rebased the market basket index, which

included updating the base year from FY 2004 to FY 2010. For FY 2018, as discussed in section V.A. of this proposed rule, we are proposing to rebase and revise the SNF market basket, updating the base year from FY 2010 to 2014.

The SNF market basket index is used to compute the market basket percentage change that is used to update the SNF federal rates on an annual basis, as required by section 1888(e)(4)(E)(ii)(IV) of the Act. This market basket percentage update is adjusted by a forecast error correction, if applicable, and then further adjusted by the application of a productivity adjustment as required by section 1888(e)(5)(B)(ii) of the Act and described in section III.B.4. of this proposed rule. For FY 2018, the growth rate of the proposed 2014-based SNF market basket is estimated to be 2.7 percent, which is based on the IHS Global Insight, Inc. (IGI) first quarter 2017 forecast with historical data through fourth quarter 2016.

However, we note that section 411(a) of the Medicare Access and CHIP Reauthorization Act of 2015 (Pub. L. 114–10, enacted on April 16, 2015) (MACRA) amended section 1888(e) of the Act to add section 1888(e)(5)(B)(iii) of the Act. Section 1888(e)(5)(B)(iii) of the Act establishes a special rule for FY 2018 that requires the market basket percentage, after the application of the productivity adjustment, to be 1.0 percent. In accordance with section 1888(e)(5)(B)(iii) of the Act, we will use a market basket percentage of 1.0 percent to update the federal rates set forth in this proposed rule. In section III.B.5. of this proposed rule, we discuss the specific application of the MACRA-specified market basket adjustment to the forthcoming annual update of the SNF PPS payment rates. In addition, in section V.B.1. of this proposed rule, we discuss the 2 percent reduction applied to the market basket update for those SNFs that fail to submit measures data as required by section 1888(e)(6)(A) of the Act.

2. Use of the SNF Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index from the midpoint of the previous FY to the midpoint of the current FY. Absent the addition of section 1888(e)(5)(B)(iii) of the Act, added by section 411(a) of MACRA, we would have used the percentage change in the SNF market basket index to compute the update factor for FY 2018. Based on the

proposed revision and rebasing of the SNF market basket discussed in section V.A. of this proposed rule, this factor would be based on the IGI first quarter 2017 forecast (with historical data through the fourth quarter 2016) of the FY 2018 percentage increase in the proposed 2014-based SNF market basket index reflecting routine, ancillary, and capital-related expenses. As discussed in sections III.B.3. and III.B.4. of this proposed rule, this market basket percentage change would be reduced by the applicable forecast error correction (as described in § 413.337(d)(2)) and by the MFP adjustment as required by section 1888(e)(5)(B)(ii) of the Act. As noted previously, section 1888(e)(5)(B)(iii) of the Act, added by section 411(a) of the MACRA, requires us to use a 1.0 percent market basket percentage instead of the estimated 2.7 percent market basket percentage, adjusted as described below, to adjust the SNF PPS federal rates for FY 2018. Additionally, as discussed in section II.B. of this proposed rule, we no longer compute update factors to adjust a facility-specific portion of the SNF PPS rates, because the initial three-phase transition period from facility-specific to full federal rates that started with cost reporting periods beginning in July 1998 has expired.

3. Forecast Error Adjustment

As discussed in the June 10, 2003 supplemental proposed rule (68 FR 34768) and finalized in the August 4, 2003 final rule (68 FR 46057 through 46059), § 413.337(d)(2) provides for an adjustment to account for market basket forecast error. The initial adjustment for market basket forecast error applied to the update of the FY 2003 rate for FY 2004, and took into account the cumulative forecast error for the period from FY 2000 through FY 2002, resulting in an increase of 3.26 percent to the FY 2004 update. Subsequent adjustments in succeeding FYs take into account the forecast error from the most recently available FY for which there is final data, and apply the difference between the forecasted and actual change in the market basket when the difference exceeds a specified threshold. We originally used a 0.25 percentage point threshold for this purpose; however, for the reasons specified in the FY 2008 SNF PPS final rule (72 FR 43425, August 3, 2007), we adopted a 0.5 percentage point threshold effective for FY 2008 and subsequent FYs. As we stated in the final rule for FY 2004 that first issued the market basket forecast error adjustment (68 FR 46058, August 4, 2003), the adjustment will reflect both

upward and downward adjustments, as appropriate.
 For FY 2016 (the most recently available FY for which there is final data), the estimated increase in the market basket index was 2.3 percentage points, while the actual increase for FY

2016 was 2.3 percentage points, resulting in the actual increase being the same as the estimated increase. Accordingly, as the difference between the estimated and actual amount of change in the market basket index does not exceed the 0.5 percentage point

threshold, the FY 2018 market basket percentage change of 2.7 percent would not have been adjusted to account for the forecast error correction. Table 1 shows the forecasted and actual market basket amounts for FY 2016.

TABLE 1—DIFFERENCE BETWEEN THE FORECASTED AND ACTUAL MARKET BASKET INCREASES FOR FY 2016

Index	Forecasted FY 2016 increase *	Actual FY 2016 increase **	FY 2016 difference
SNF	2.3	2.3	0.0

* Published in **Federal Register**; based on second quarter 2015 IGI forecast (2010-based index).

** Based on the first quarter 2017 IGI forecast, with historical data through the fourth quarter 2016 (2010-based index).

4. Multifactor Productivity Adjustment

Section 1888(e)(5)(B)(ii) of the Act, as added by section 3401(b) of the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010) (Affordable Care Act) requires that, in FY 2012 and in subsequent FYs, the market basket percentage under the SNF payment system (as described in section 1888(e)(5)(B)(i) of the Act) is to be reduced annually by the multifactor productivity (MFP) adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1886(b)(3)(B)(xi)(II) of the Act, in turn, defines the MFP adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multi-factor productivity (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost-reporting period, or other annual period). The Bureau of Labor Statistics (BLS) is the agency that publishes the official measure of private nonfarm business MFP. We refer readers to the BLS Web site at <http://www.bls.gov/mfp> for the BLS historical published MFP data.

MFP is derived by subtracting the contribution of labor and capital inputs growth from output growth. The projections of the components of MFP are currently produced by IGI, a nationally recognized economic forecasting firm with which CMS contracts to forecast the components of the market baskets and MFP. To generate a forecast of MFP, IGI replicates the MFP measure calculated by the BLS, using a series of proxy variables derived from IGI’s U.S. macroeconomic models. For a discussion of the MFP projection methodology, we refer readers to the FY 2012 SNF PPS final rule (76 FR 48527 through 48529) and the FY 2016 SNF PPS final rule (80 FR 46395). A complete description of the MFP projection methodology is available on

our Web site at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.html>.

a. Incorporating the MFP Adjustment Into the Market Basket Update

Per section 1888(e)(5)(A) of the Act, the Secretary shall establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. Section 1888(e)(5)(B)(ii) of the Act, added by section 3401(b) of the Affordable Care Act, requires that for FY 2012 and each subsequent FY, after determining the market basket percentage described in section 1888(e)(5)(B)(i) of the Act, the Secretary shall reduce such percentage by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act (which we refer to as the MFP adjustment). Section 1888(e)(5)(B)(ii) of the Act further states that the reduction of the market basket percentage by the MFP adjustment may result in the market basket percentage being less than zero for a FY, and may result in payment rates under section 1888(e) of the Act being less than such payment rates for the preceding fiscal year.

If not for the enactment of section 411(a) of the MACRA, the FY 2018 update would include a calculation of the MFP adjustment as the 10-year moving average of changes in MFP for the period ending September 30, 2018, which is estimated to be 0.4 percent. Also, if not for the enactment of section 411(a) of the MACRA, consistent with section 1888(e)(5)(B)(i) of the Act and § 413.337(d)(2) of the regulations, the market basket percentage for FY 2018 for the SNF PPS would be based on IGI’s first quarter 2017 forecast of the SNF market basket update, which is estimated to be 2.7 percent. In

accordance with section 1888(e)(5)(B)(ii) of the Act (as added by section 3401(b) of the Affordable Care Act) and § 413.337(d)(3), this market basket percentage would then be reduced by the MFP adjustment (the 10-year moving average of changes in MFP for the period ending September 30, 2018) of 0.4 percent, which would be calculated as described above and based on IGI’s first quarter 2017 forecast. Absent the enactment of section 411(a) of MACRA, the resulting MFP-adjusted SNF market basket update would have been equal to 2.3 percent, or 2.7 percent less 0.4 percentage point. However, as discussed above, section 1888(e)(5)(B)(iii) of the Act, added by section 411(a) of the MACRA, requires us to apply a 1.0 percent positive market basket adjustment in determining the FY 2018 SNF payment rates set forth in this proposed rule, without regard to the market basket update as adjusted by the MFP adjustment described above.

5. Market Basket Update Factor for FY 2018

Sections 1888(e)(4)(E)(ii)(IV) and 1888(e)(5)(i) of the Act require that the update factor used to establish the FY 2018 unadjusted federal rates be at a level equal to the market basket index percentage change. Accordingly, we determined the total growth from the average market basket level for the period of October 1, 2016, through September 30, 2017 to the average market basket level for the period of October 1, 2017, through September 30, 2018. This process yields a percentage change in the proposed 2014-based SNF market basket of 2.7 percent.

As further explained in section III.B.3. of this proposed rule, as applicable, we adjust the market basket percentage change by the forecast error from the most recently available FY for which there is final data and apply this adjustment whenever the difference

between the forecasted and actual percentage change in the market basket exceeds a 0.5 percentage point threshold. Since the difference between the forecasted FY 2016 SNF market basket percentage change and the actual FY 2016 SNF market basket percentage change (FY 2016 is the most recently available FY for which there is historical data) did not exceed the 0.5 percentage point threshold, the FY 2018 market basket percentage change of 2.7 percent would not be adjusted by the forecast error correction.

If not for the enactment of section 411(a) of the MACRA, the SNF market basket for FY 2018 would be determined in accordance with section 1888(e)(5)(B)(ii) of the Act, which requires us to reduce the market basket

percentage change by the MFP adjustment (the 10-year moving average of changes in MFP for the period ending September 30, 2018) of 0.4 percent, as described in section III.B.4. of this proposed rule. Thus, absent the enactment of MACRA, the resulting net SNF market basket update would equal 2.3 percent, or 2.7 percent less the 0.4 percentage point MFP adjustment. We note that our policy has been that, if more recent data becomes available (for example, a more recent estimate of the SNF market basket and/or MFP adjustment), we would use such data, if appropriate, to determine the SNF market basket percentage change, labor-related share relative importance, forecast error adjustment, and MFP adjustment in the SNF PPS final rule.

Historically, we have used the SNF market basket, adjusted as described above, to adjust each per diem component of the federal rates forward to reflect the change in the average prices from one year to the next. However, section 1888(e)(5)(B)(iii) of the Act, as added by section 411(a) of the MACRA, requires us to use a market basket percentage of 1.0 percent, after application of the MFP to adjust the federal rates for FY 2018. Under section 1888(e)(5)(B)(iii) of the Act, the market basket percentage increase used to determine the federal rates set forth in this proposed rule will be 1.0 percent for FY 2018. Tables 2 and 3 reflect the updated components of the unadjusted federal rates for FY 2018, prior to adjustment for case-mix.

TABLE 2—FY 2018 UNADJUSTED FEDERAL RATE PER DIEM—URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	\$177.16	\$133.44	\$17.58	\$90.42

TABLE 3—FY 2018 UNADJUSTED FEDERAL RATE PER DIEM—RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	\$169.24	\$153.87	\$18.78	\$92.09

In addition, we note that section 1888(e)(6)(A)(i) of the Act provides that, beginning in FY 2018, SNFs that fail to submit data, as applicable, in accordance with sections 1888(e)(6)(B)(i)(II) and (III) of the Act for a fiscal year will receive a 2.0 percentage point reduction to their market basket update for the fiscal year involved, after application of section 1888(e)(5)(B)(ii) of the Act (the MFP adjustment) and section 1888(e)(5)(B)(iii) of the Act (the 1 percent market basket increase for FY 2018) (for additional information on the SNF QRP, including the statutory authority and the selected measures, we refer readers to section V.B of this proposed rule). In addition, section 1888(e)(6)(A)(ii) of the Act states that application of the 2.0 percentage point reduction (after application of section 1888(e)(5)(B)(ii) and (iii) of the Act) may result in the market basket index percentage change being less than 0.0 for a fiscal year, and may result in payment rates for a fiscal year being less than such payment rates for the preceding fiscal year. Section 1888(e)(6)(A)(iii) of the Act further specifies that the 2.0 percentage point reduction is applied in a noncumulative

manner, so that any reduction made under section 1888(e)(6)(A)(i) of the Act shall apply only for the fiscal year involved, and the Secretary shall not take into account such reduction in computing the payment amount for a subsequent fiscal year.

Accordingly, we propose that beginning with FY 2018, for SNFs that do not satisfy the reporting requirements for the FY 2018 SNF QRP, we would apply a penalty of a 2.0 percentage point reduction to the SNF market basket percentage change for that fiscal year, after application of any applicable forecast error adjustment as specified in § 413.337(d)(2), MFP adjustment as specified in § 413.337(d)(3), and the 1 percent SNF market basket percentage change for FY 2018 required by section 1888(e)(5)(B)(iii) of the Act. We note that in FY 2018, the application of this penalty to those SNFs that do not meet the requirements for the FY 2018 SNF QRP would produce a market basket index percentage change for that FY that is less than zero (specifically, a net update of negative 1.0 percentage point), and would also result in FY 2018 payment rates that are less than such payment rates for the preceding FY. We also propose to amend the regulations at

§ 413.337 by adding a new paragraph (d)(4) that would implement this statutory 2 percent reduction. We invite comments on these proposals.

C. Case-Mix Adjustment

Under section 1888(e)(4)(G)(i) of the Act, the federal rate also incorporates an adjustment to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. The statute specifies that the adjustment is to reflect both a resident classification system that the Secretary establishes to account for the relative resource use of different patient types, as well as resident assessment data and other data that the Secretary considers appropriate. In the interim final rule with comment period that initially implemented the SNF PPS (63 FR 26252, May 12, 1998), we developed the RUG—III case-mix classification system, which tied the amount of payment to resident resource use in combination with resident characteristic information. Staff time measurement (STM) studies conducted in 1990, 1995, and 1997 provided information on resource use (time spent by staff members on residents) and resident characteristics that enabled us not only to establish RUG—III, but also

to create case-mix indexes (CMIs). The original RUG–III grouper logic was based on clinical data collected in 1990, 1995, and 1997. As discussed in the SNF PPS proposed rule for FY 2010 (74 FR 22208), we subsequently conducted a multi-year data collection and analysis under the Staff Time and Resource Intensity Verification (STRIVE) project to update the case-mix classification system for FY 2011. The resulting Resource Utilization Groups, Version 4 (RUG–IV) case-mix classification system reflected the data collected in 2006–2007 during the STRIVE project, and was finalized in the FY 2010 SNF PPS final rule (74 FR 40288) to take effect in FY 2011 concurrently with an updated new resident assessment instrument, version 3.0 of the Minimum Data Set (MDS 3.0), which collects the clinical data used for case-mix classification under RUG–IV.

We note that case-mix classification is based, in part, on the beneficiary’s need for skilled nursing care and therapy services. The case-mix classification system uses clinical data from the MDS to assign a case-mix group to each patient that is then used to calculate a per diem payment under the SNF PPS. As discussed in section IV.A. of this proposed rule, the clinical orientation of the case-mix classification system supports the SNF PPS’s use of an administrative presumption that considers a beneficiary’s initial case-mix classification to assist in making certain SNF level of care determinations. Further, because the MDS is used as a basis for payment, as well as a clinical assessment, we have provided extensive training on proper coding and the time frames for MDS completion in our Resident Assessment Instrument (RAI) Manual. For an MDS to be considered valid for use in determining payment,

the MDS assessment must be completed in compliance with the instructions in the RAI Manual in effect at the time the assessment is completed. For payment and quality monitoring purposes, the RAI Manual consists of both the Manual instructions and the interpretive guidance and policy clarifications posted on the appropriate MDS Web site at <http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/MDS30RAIManual.html>.

In addition, we note that section 511 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173, enacted December 8, 2003) (MMA) amended section 1888(e)(12) of the Act to provide for a temporary increase of 128 percent in the PPS per diem payment for any SNF residents with Acquired Immune Deficiency Syndrome (AIDS), effective with services furnished on or after October 1, 2004. This special add-on for SNF residents with AIDS was to remain in effect only until the Secretary certifies that there is an appropriate adjustment in the case mix to compensate for the increased costs associated with such residents. The add-on for SNF residents with AIDS is also discussed in Program Transmittal #160 (Change Request #3291), issued on April 30, 2004, which is available online at www.cms.gov/transmittals/downloads/r160cp.pdf. In the SNF PPS final rule for FY 2010 (74 FR 40288), we did not address this certification in that final rule’s implementation of the case-mix refinements for RUG–IV, thus allowing the add-on payment required by section 511 of the MMA to remain in effect for the time being.

For the limited number of SNF residents that qualify for this add-on, there is a significant increase in payments. For example, using FY 2015

data (which still used ICD–9–CM coding), we identified fewer than 5085 SNF residents with a diagnosis code of 042 (Human Immunodeficiency Virus (HIV) Infection). As explained in the FY 2016 SNF PPS final rule (80 FR 46397 through 46398), on October 1, 2015 (consistent with section 212 of PAMA), we converted to using ICD–10–CM code B20 to identify those residents for whom it is appropriate to apply the AIDS add-on established by section 511 of the MMA. For FY 2018, an urban facility with a resident with AIDS in RUG–IV group “HC2” would have a case-mix adjusted per diem payment of \$442.50 (see Table 4) before the application of the MMA adjustment. After an increase of 128 percent, this urban facility would receive a case-mix adjusted per diem payment of approximately \$1,008.90.

Under section 1888(e)(4)(H), each update of the payment rates must include the case-mix classification methodology applicable for the upcoming FY. The FY 2018 payment rates set forth in this proposed rule reflect the use of the RUG–IV case-mix classification system from October 1, 2017, through September 30, 2018. We list the proposed case-mix adjusted RUG–IV payment rates for FY 2018, provided separately for urban and rural SNFs, in Tables 4 and 5 with corresponding case-mix values. We use the revised OMB delineations adopted in the FY 2015 SNF PPS final rule (79 FR 45632, 45634) to identify a facility’s urban or rural status for the purpose of determining which set of rate tables would apply to the facility. Tables 4 and 5 do not reflect the add-on for SNF residents with AIDS enacted by section 511 of the MMA, which we apply only after making all other adjustments (such as wage index and case-mix).

TABLE 4—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES [Urban]

RUG–IV category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
RUX	2.67	1.87	\$473.02	\$249.53	.....	\$90.42	\$812.97
RUL	2.57	1.87	455.30	249.53	.....	90.42	795.25
RVX	2.61	1.28	462.39	170.80	.....	90.42	723.61
RVL	2.19	1.28	387.98	170.80	.....	90.42	649.20
RHX	2.55	0.85	451.76	113.42	.....	90.42	655.60
RHL	2.15	0.85	380.89	113.42	.....	90.42	584.73
RMX	2.47	0.55	437.59	73.39	.....	90.42	601.40
RML	2.19	0.55	387.98	73.39	.....	90.42	551.79
RLX	2.26	0.28	400.38	37.36	.....	90.42	528.16
RUC	1.56	1.87	276.37	249.53	.....	90.42	616.32
RUB	1.56	1.87	276.37	249.53	.....	90.42	616.32
RUA	0.99	1.87	175.39	249.53	.....	90.42	515.34
RVC	1.51	1.28	267.51	170.80	.....	90.42	528.73
RVB	1.11	1.28	196.65	170.80	.....	90.42	457.87
RVA	1.10	1.28	194.88	170.80	.....	90.42	456.10

TABLE 4—RUG-IV CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES—Continued
[Urban]

RUG-IV category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
RHC	1.45	0.85	256.88	113.42	.....	90.42	460.72
RHB	1.19	0.85	210.82	113.42	.....	90.42	414.66
RHA	0.91	0.85	161.22	113.42	.....	90.42	365.06
RMC	1.36	0.55	240.94	73.39	.....	90.42	404.75
RMB	1.22	0.55	216.14	73.39	.....	90.42	379.95
RMA	0.84	0.55	148.81	73.39	.....	90.42	312.62
RLB	1.50	0.28	265.74	37.36	.....	90.42	393.52
RLA	0.71	0.28	125.78	37.36	.....	90.42	253.56
ES3	3.58	.....	634.23	.....	\$17.58	90.42	742.23
ES2	2.67	.....	473.02	.....	17.58	90.42	581.02
ES1	2.32	.....	411.01	.....	17.58	90.42	519.01
HE2	2.22	.....	393.30	.....	17.58	90.42	501.30
HE1	1.74	.....	308.26	.....	17.58	90.42	416.26
HD2	2.04	.....	361.41	.....	17.58	90.42	469.41
HD1	1.60	.....	283.46	.....	17.58	90.42	391.46
HC2	1.89	.....	334.83	.....	17.58	90.42	442.83
HC1	1.48	.....	262.20	.....	17.58	90.42	370.20
HB2	1.86	.....	329.52	.....	17.58	90.42	437.52
HB1	1.46	.....	258.65	.....	17.58	90.42	366.65
LE2	1.96	.....	347.23	.....	17.58	90.42	455.23
LE1	1.54	.....	272.83	.....	17.58	90.42	380.83
LD2	1.86	.....	329.52	.....	17.58	90.42	437.52
LD1	1.46	.....	258.65	.....	17.58	90.42	366.65
LC2	1.56	.....	276.37	.....	17.58	90.42	384.37
LC1	1.22	.....	216.14	.....	17.58	90.42	324.14
LB2	1.45	.....	256.88	.....	17.58	90.42	364.88
LB1	1.14	.....	201.96	.....	17.58	90.42	309.96
CE2	1.68	.....	297.63	.....	17.58	90.42	405.63
CE1	1.50	.....	265.74	.....	17.58	90.42	373.74
CD2	1.56	.....	276.37	.....	17.58	90.42	384.37
CD1	1.38	.....	244.48	.....	17.58	90.42	352.48
CC2	1.29	.....	228.54	.....	17.58	90.42	336.54
CC1	1.15	.....	203.73	.....	17.58	90.42	311.73
CB2	1.15	.....	203.73	.....	17.58	90.42	311.73
CB1	1.02	.....	180.70	.....	17.58	90.42	288.70
CA2	0.88	.....	155.90	.....	17.58	90.42	263.90
CA1	0.78	.....	138.18	.....	17.58	90.42	246.18
BB2	0.97	.....	171.85	.....	17.58	90.42	279.85
BB1	0.90	.....	159.44	.....	17.58	90.42	267.44
BA2	0.70	.....	124.01	.....	17.58	90.42	232.01
BA1	0.64	.....	113.38	.....	17.58	90.42	221.38
PE2	1.50	.....	265.74	.....	17.58	90.42	373.74
PE1	1.40	.....	248.02	.....	17.58	90.42	356.02
PD2	1.38	.....	244.48	.....	17.58	90.42	352.48
PD1	1.28	.....	226.76	.....	17.58	90.42	334.76
PC2	1.10	.....	194.88	.....	17.58	90.42	302.88
PC1	1.02	.....	180.70	.....	17.58	90.42	288.70
PB2	0.84	.....	148.81	.....	17.58	90.42	256.81
PB1	0.78	.....	138.18	.....	17.58	90.42	246.18
PA2	0.59	.....	104.52	.....	17.58	90.42	212.52
PA1	0.54	.....	95.67	.....	17.58	90.42	203.67

TABLE 5—RUG-IV CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
[Rural]

RUG-IV category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
RUX	2.67	1.87	\$451.87	\$287.74	.....	\$92.09	\$831.70
RUL	2.57	1.87	434.95	287.74	.....	92.09	814.78
RVX	2.61	1.28	441.72	196.95	.....	92.09	730.76
RVL	2.19	1.28	370.64	196.95	.....	92.09	659.68
RHX	2.55	0.85	431.56	130.79	.....	92.09	654.44
RHL	2.15	0.85	363.87	130.79	.....	92.09	586.75
RMX	2.47	0.55	418.02	84.63	.....	92.09	594.74
RML	2.19	0.55	370.64	84.63	.....	92.09	547.36
RLX	2.26	0.28	382.48	43.08	.....	92.09	517.65

TABLE 5—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES—Continued
[Rural]

RUG–IV category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
RUC	1.56	1.87	264.01	287.74	.....	92.09	643.84
RUB	1.56	1.87	264.01	287.74	.....	92.09	643.84
RUA	0.99	1.87	167.55	287.74	.....	92.09	547.38
RVC	1.51	1.28	255.55	196.95	.....	92.09	544.59
RVB	1.11	1.28	187.86	196.95	.....	92.09	476.90
RVA	1.10	1.28	186.16	196.95	.....	92.09	475.20
RHC	1.45	0.85	245.40	130.79	.....	92.09	468.28
RHB	1.19	0.85	201.40	130.79	.....	92.09	424.28
RHA	0.91	0.85	154.01	130.79	.....	92.09	376.89
RMC	1.36	0.55	230.17	84.63	.....	92.09	406.89
RMB	1.22	0.55	206.47	84.63	.....	92.09	383.19
RMA	0.84	0.55	142.16	84.63	.....	92.09	318.88
RLB	1.50	0.28	253.86	43.08	.....	92.09	389.03
RLA	0.71	0.28	120.16	43.08	.....	92.09	255.33
ES3	3.58	.....	605.88	.....	\$18.78	92.09	716.75
ES2	2.67	.....	451.87	.....	18.78	92.09	562.74
ES1	2.32	.....	392.64	.....	18.78	92.09	503.51
HE2	2.22	.....	375.71	.....	18.78	92.09	486.58
HE1	1.74	.....	294.48	.....	18.78	92.09	405.35
HD2	2.04	.....	345.25	.....	18.78	92.09	456.12
HD1	1.60	.....	270.78	.....	18.78	92.09	381.65
HC2	1.89	.....	319.86	.....	18.78	92.09	430.73
HC1	1.48	.....	250.48	.....	18.78	92.09	361.35
HB2	1.86	.....	314.79	.....	18.78	92.09	425.66
HB1	1.46	.....	247.09	.....	18.78	92.09	357.96
LE2	1.96	.....	331.71	.....	18.78	92.09	442.58
LE1	1.54	.....	260.63	.....	18.78	92.09	371.50
LD2	1.86	.....	314.79	.....	18.78	92.09	425.66
LD1	1.46	.....	247.09	.....	18.78	92.09	357.96
LC2	1.56	.....	264.01	.....	18.78	92.09	374.88
LC1	1.22	.....	206.47	.....	18.78	92.09	317.34
LB2	1.45	.....	245.40	.....	18.78	92.09	356.27
LB1	1.14	.....	192.93	.....	18.78	92.09	303.80
CE2	1.68	.....	284.32	.....	18.78	92.09	395.19
CE1	1.50	.....	253.86	.....	18.78	92.09	364.73
CD2	1.56	.....	264.01	.....	18.78	92.09	374.88
CD1	1.38	.....	233.55	.....	18.78	92.09	344.42
CC2	1.29	.....	218.32	.....	18.78	92.09	329.19
CC1	1.15	.....	194.63	.....	18.78	92.09	305.50
CB2	1.15	.....	194.63	.....	18.78	92.09	305.50
CB1	1.02	.....	172.62	.....	18.78	92.09	283.49
CA2	0.88	.....	148.93	.....	18.78	92.09	259.80
CA1	0.78	.....	132.01	.....	18.78	92.09	242.88
BB2	0.97	.....	164.16	.....	18.78	92.09	275.03
BB1	0.90	.....	152.32	.....	18.78	92.09	263.19
BA2	0.70	.....	118.47	.....	18.78	92.09	229.34
BA1	0.64	.....	108.31	.....	18.78	92.09	219.18
PE2	1.50	.....	253.86	.....	18.78	92.09	364.73
PE1	1.40	.....	236.94	.....	18.78	92.09	347.81
PD2	1.38	.....	233.55	.....	18.78	92.09	344.42
PD1	1.28	.....	216.63	.....	18.78	92.09	327.50
PC2	1.10	.....	186.16	.....	18.78	92.09	297.03
PC1	1.02	.....	172.62	.....	18.78	92.09	283.49
PB2	0.84	.....	142.16	.....	18.78	92.09	253.03
PB1	0.78	.....	132.01	.....	18.78	92.09	242.88
PA2	0.59	.....	99.85	.....	18.78	92.09	210.72
PA1	0.54	.....	91.39	.....	18.78	92.09	202.26

D. Wage Index Adjustment

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the federal rates to account for differences in area wage levels, using a wage index that the Secretary determines appropriate. Since the inception of the SNF PPS, we have

used hospital inpatient wage data in developing a wage index to be applied to SNFs. We propose to continue this practice for FY 2018, as we continue to believe that in the absence of SNF-specific wage data, using the hospital inpatient wage index data is appropriate and reasonable for the SNF PPS. As

explained in the update notice for FY 2005 (69 FR 45786), the SNF PPS does not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data

also excludes any wage data related to SNFs. Therefore, we believe that using the updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments. For FY 2018, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2013 and before October 1, 2014 (FY 2014 cost report data).

We note that section 315 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554, enacted on December 21, 2000) (BIPA) authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF wage index that is based on wage data from nursing homes. However, to date, this has proven to be unfeasible due to the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of that data. More specifically, we believe auditing all SNF cost reports, similar to the process used to audit inpatient hospital cost reports for purposes of the Inpatient Prospective Payment System (IPPS) wage index, would place a burden on providers in terms of recordkeeping and completion of the cost report worksheet. We also believe that adopting such an approach would require a significant commitment of resources by CMS and the Medicare Administrative Contractors, potentially far in excess of those required under the IPPS given that there are nearly five times as many SNFs as there are inpatient hospitals. Therefore, while we continue to believe that the development of such an audit process could improve SNF cost reports in such a manner as to permit us to establish a SNF-specific wage index, we do not regard an undertaking of this magnitude as being feasible within the current level of programmatic resources.

In addition, we propose to continue to use the same methodology discussed in the SNF PPS final rule for FY 2008 (72 FR 43423) to address those geographic areas in which there are no hospitals, and thus, no hospital wage index data on which to base the calculation of the FY 2018 SNF PPS wage index. For rural geographic areas that do not have hospitals, and therefore, lack hospital wage data on which to base an area wage adjustment, we would use the average wage index from all contiguous Core-Based Statistical Areas (CBSAs) as a reasonable proxy. For FY 2018, there are no rural geographic areas that do not have hospitals, and thus, this methodology would not be applied. For rural Puerto Rico, we would not apply

this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity to one another of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas); instead, we would continue to use the most recent wage index previously available for that area. For urban areas without specific hospital wage index data, we would use the average wage indexes of all of the urban areas within the state to serve as a reasonable proxy for the wage index of that urban CBSA. For FY 2018, the only urban area without wage index data available is CBSA 25980, Hinesville-Fort Stewart, GA. The proposed wage index applicable to FY 2018 is set forth in Tables A and B available on the CMS Web site at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html>.

In the SNF PPS final rule for FY 2006 (70 FR 45026, August 4, 2005), we adopted the changes discussed in the OMB Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for MSAs and the creation of micropolitan statistical areas and combined statistical areas.

In adopting the CBSA geographic designations, we provided for a one-year transition in FY 2006 with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041), since the expiration of this one-year transition on September 30, 2006, we have used the full CBSA-based wage index values.

In the FY 2015 SNF PPS final rule (79 FR 45644 through 45646), we finalized changes to the SNF PPS wage index based on the newest OMB delineations, as described in OMB Bulletin No. 13–01, beginning in FY 2015, including a 1-year transition with a blended wage index for FY 2015. OMB Bulletin No. 13–01 established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas in the United States and Puerto Rico based on the 2010 Census, and provided guidance on the use of the delineations of these statistical areas using standards published on June 28, 2010 in the **Federal Register** (75 FR 37246 through 37252). Subsequently, on July 15, 2015,

OMB issued OMB Bulletin No. 15–01, which provides minor updates to and supersedes OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provides detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15–01 are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013. As we previously stated in the FY 2008 SNF PPS proposed and final rules (72 FR 25538 through 25539, and 72 FR 43423), we again wish to clarify that this and all subsequent SNF PPS rules and notices are considered to incorporate any updates and revisions set forth in the most recent OMB bulletin that applies to the hospital wage data used to determine the current SNF PPS wage index. As noted above, the proposed wage index applicable to FY 2018 is set forth in Tables A and B available on the CMS Web site at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html>.

Once calculated, we would apply the wage index adjustment to the labor-related portion of the federal rate. Each year, we calculate a revised labor-related share, based on the relative importance of labor-related cost categories (that is, those cost categories that are labor-intensive and vary with the local labor market) in the input price index. In the SNF PPS final rule for FY 2014 (78 FR 47944 through 47946), we finalized a proposal to revise the labor-related share to reflect the relative importance of the FY 2010-based SNF market basket cost weights for the following cost categories: Wages and Salaries; Employee Benefits; Professional fees: Labor-related; Administrative and Facilities Support Services; All other—Labor-Related Services; and a proportion of Capital-Related expenses. Effective beginning FY 2018, as discussed in section V.A. of this proposed rule, we are proposing to revise the labor-related share to reflect the relative importance of the proposed 2014-based SNF market basket cost weights for the following cost categories: Wages and Salaries; Employee Benefits; Professional fees: Labor-related; Administrative and Facilities Support services; Installation, Maintenance, and Repair services; All Other: Labor-Related Services; and a proportion of Capital-Related expenses.

We calculate the labor-related relative importance from the SNF market basket, and it approximates the labor-related portion of the total costs after taking

into account historical and projected price changes between the base year and FY 2018. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes.

Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2018 than the base year weights from the SNF market basket. The proposed methodology for calculating the labor-related portion for FY 2018 is discussed in section V.A. of

this proposed rule and the proposed labor-related share is provided in Table 15.

Tables 6 and 7 show the proposed RUG-IV case-mix adjusted federal rates for FY 2018 by labor-related and non-labor-related components.

TABLE 6—RUG-IV CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT

RUG-IV category	Total rate	Labor portion	Non-labor portion
RUX	812.97	\$575.58	\$237.39
RUL	795.25	563.04	232.21
RVX	723.61	512.32	211.29
RVL	649.20	459.63	189.57
RHX	655.60	464.16	191.44
RHL	584.73	413.99	170.74
RMX	601.40	425.79	175.61
RML	551.79	390.67	161.12
RLX	528.16	373.94	154.22
RUC	616.32	436.35	179.97
RUB	616.32	436.35	179.97
RUA	515.34	364.86	150.48
RVC	528.73	374.34	154.39
RVB	457.87	324.17	133.70
RVA	456.10	322.92	133.18
RHC	460.72	326.19	134.53
RHB	414.66	293.58	121.08
RHA	365.06	258.46	106.60
RMC	404.75	286.56	118.19
RMB	379.95	269.00	110.95
RMA	312.62	221.33	91.29
RLB	393.52	278.61	114.91
RLA	253.56	179.52	74.04
ES3	742.23	525.50	216.73
ES2	581.02	411.36	169.66
ES1	519.01	367.46	151.55
HE2	501.30	354.92	146.38
HE1	416.26	294.71	121.55
HD2	469.41	332.34	137.07
HD1	391.46	277.15	114.31
HC2	442.83	313.52	129.31
HC1	370.20	262.10	108.10
HB2	437.52	309.76	127.76
HB1	366.65	259.59	107.06
LE2	455.23	322.30	132.93
LE1	380.83	269.63	111.20
LD2	437.52	309.76	127.76
LD1	366.65	259.59	107.06
LC2	384.37	272.13	112.24
LC1	324.14	229.49	94.65
LB2	364.88	258.34	106.54
LB1	309.96	219.45	90.51
CE2	405.63	287.19	118.44
CE1	373.74	264.61	109.13
CD2	384.37	272.13	112.24
CD1	352.48	249.56	102.92
CC2	336.54	238.27	98.27
CC1	311.73	220.70	91.03
CB2	311.73	220.70	91.03
CB1	288.70	204.40	84.30
CA2	263.90	186.84	77.06
CA1	246.18	174.30	71.88
BB2	279.85	198.13	81.72
BB1	267.44	189.35	78.09
BA2	232.01	164.26	67.75
BA1	221.38	156.74	64.64
PE2	373.74	264.61	109.13
PE1	356.02	252.06	103.96
PD2	352.48	249.56	102.92
PD1	334.76	237.01	97.75
PC2	302.88	214.44	88.44
PC1	288.70	204.40	84.30
PB2	256.81	181.82	74.99

TABLE 6—RUG-IV CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUG-IV category	Total rate	Labor portion	Non-labor portion
PB1	246.18	174.30	71.88
PA2	212.52	150.46	62.06
PA1	203.67	144.20	59.47

TABLE 7—RUG-IV CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT

RUG-IV category	Total rate	Labor portion	Non-labor portion
RUX	831.70	\$588.84	\$242.86
RUL	814.78	576.86	237.92
RVX	730.76	517.38	213.38
RVL	659.68	467.05	192.63
RHX	654.44	463.34	191.10
RHL	586.75	415.42	171.33
RMX	594.74	421.08	173.66
RML	547.36	387.53	159.83
RLX	517.65	366.50	151.15
RUC	643.84	455.84	188.00
RUB	643.84	455.84	188.00
RUA	547.38	387.55	159.83
RVC	544.59	385.57	159.02
RVB	476.90	337.65	139.25
RVA	475.20	336.44	138.76
RHC	468.28	331.54	136.74
RHB	424.28	300.39	123.89
RHA	376.89	266.84	110.05
RMC	406.89	288.08	118.81
RMB	383.19	271.30	111.89
RMA	318.88	225.77	93.11
RLB	389.03	275.43	113.60
RLA	255.33	180.77	74.56
ES3	716.75	507.46	209.29
ES2	562.74	398.42	164.32
ES1	503.51	356.49	147.02
HE2	486.58	344.50	142.08
HE1	405.35	286.99	118.36
HD2	456.12	322.93	133.19
HD1	381.65	270.21	111.44
HC2	430.73	304.96	125.77
HC1	361.35	255.84	105.51
HB2	425.66	301.37	124.29
HB1	357.96	253.44	104.52
LE2	442.58	313.35	129.23
LE1	371.50	263.02	108.48
LD2	425.66	301.37	124.29
LD1	357.96	253.44	104.52
LC2	374.88	265.42	109.46
LC1	317.34	224.68	92.66
LB2	356.27	252.24	104.03
LB1	303.80	215.09	88.71
CE2	395.19	279.79	115.40
CE1	364.73	258.23	106.50
CD2	374.88	265.42	109.46
CD1	344.42	243.85	100.57
CC2	329.19	233.07	96.12
CC1	305.50	216.29	89.21
CB2	305.50	216.29	89.21
CB1	283.49	200.71	82.78
CA2	259.80	183.94	75.86
CA1	242.88	171.96	70.92
BB2	275.03	194.72	80.31
BB1	263.19	186.34	76.85
BA2	229.34	162.37	66.97
BA1	219.18	155.18	64.00
PE2	364.73	258.23	106.50
PE1	347.81	246.25	101.56
PD2	344.42	243.85	100.57
PD1	327.50	231.87	95.63

TABLE 7—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUG–IV category	Total rate	Labor portion	Non-labor portion
PC2	297.03	210.30	86.73
PC1	283.49	200.71	82.78
PB2	253.03	179.15	73.88
PB1	242.88	171.96	70.92
PA2	210.72	149.19	61.53
PA1	202.26	143.20	59.06

Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments under the SNF PPS that are greater or less than would otherwise be made if the wage adjustment had not been made. For FY 2018 (federal rates effective October 1, 2017), we would apply an adjustment to fulfill the budget neutrality requirement. We would meet this requirement by multiplying each of the components of the unadjusted federal rates by a budget neutrality factor equal to the ratio of the weighted average wage adjustment

factor for FY 2017 to the weighted average wage adjustment factor for FY 2018. For this calculation, we would use the same FY 2016 claims utilization data for both the numerator and denominator of this ratio. We define the wage adjustment factor used in this calculation as the labor share of the rate component multiplied by the wage index plus the non-labor share of the rate component. The budget neutrality factor for FY 2018 would be 1.0003.

E. Adjusted Rate Computation Example

Using the hypothetical SNF XYZ, Table 8 shows the adjustments made to

the federal per diem rates to compute the provider’s actual per diem PPS payment for FY 2018. We derive the Labor and Non-labor columns from Table 6. The wage index used in this example is based on the proposed wage index, which may be found in Table A available on the CMS Web site at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html>. As illustrated in Table 8, SNF XYZ’s total PPS payment for FY 2018 would equal \$47,647.74.

TABLE 8—ADJUSTED RATE COMPUTATION EXAMPLE SNF XYZ: LOCATED IN FREDERICK, MD (URBAN CBSA 43524) WAGE INDEX: 0.9886

[See Proposed Wage Index in Table A] ¹

RUG–IV group	Labor	Wage index	Adjusted labor	Non-labor	Adjusted rate	Percent adjustment	Medicare days	Payment
RVX	\$512.32	0.9886	\$506.48	\$211.29	\$717.77	\$717.77	14	\$10,048.78
ES2	411.36	0.9886	406.67	169.66	576.33	576.33	30	17,289.90
RHA	258.46	0.9886	255.51	106.60	362.11	362.11	16	5,793.76
CC2*	238.27	0.9886	235.55	98.27	333.82	761.11	10	7,611.10
BA2	164.26	0.9886	162.39	67.75	230.14	230.14	30	6,904.20
.....	.....	.....	.....	.....	.....	.....	100	47,647.74

* Reflects a 128 percent adjustment from section 511 of the MMA.

¹ Available on the CMS Web site at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html>.

IV. Additional Aspects of the SNF PPS

A. SNF Level of Care—Administrative Presumption

The establishment of the SNF PPS did not change Medicare’s fundamental requirements for SNF coverage. However, because the case-mix classification is based, in part, on the beneficiary’s need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the existing resident assessment process and case-mix classification system discussed in section III.C. of this proposed rule. This approach includes an administrative presumption that utilizes a beneficiary’s initial classification in one of the upper 52 RUGs of the 66-group RUG–IV case-mix classification system to assist in

making certain SNF level of care determinations.

In accordance with the regulations at § 413.345, we include in each update of the federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. As set forth in the FY 2011 SNF PPS update notice (75 FR 42910), this designation reflects an administrative presumption under the 66-group RUG–IV system that beneficiaries who are correctly assigned to one of the upper 52 RUG–IV groups on the initial five-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to and including the assessment reference date (ARD) on the 5-day Medicare-required assessment.

A beneficiary assigned to any of the lower 14 RUG–IV groups is not automatically classified as either meeting or not meeting the definition, but instead receives an individual level of care determination using the existing administrative criteria. This presumption recognizes the strong likelihood that beneficiaries assigned to one of the upper 52 RUG–IV groups during the immediate post-hospital period require a covered level of care, which would be less likely for those beneficiaries assigned to one of the lower 14 RUG–IV groups.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the case-mix classification structure.

In this proposed rule, for FY 2018, we would continue to designate the upper 52 RUG–IV groups for purposes of this administrative presumption, consisting of all groups encompassed by the following RUG–IV categories:

- Rehabilitation plus Extensive Services.
- Ultra High Rehabilitation.
- Very High Rehabilitation.
- High Rehabilitation.
- Medium Rehabilitation.
- Low Rehabilitation.
- Extensive Services.
- Special Care High.
- Special Care Low.
- Clinically Complex.

However, we note that this administrative presumption policy does not supersede the SNF’s responsibility to ensure that its decisions relating to level of care are appropriate and timely, including a review to confirm that the services prompting the beneficiary’s assignment to one of the upper 52 RUG–IV groups (which, in turn, serves to trigger the administrative presumption) are themselves medically necessary. As we explained in the FY 2000 SNF PPS final rule (64 FR 41667), the administrative presumption:

“. . . is itself rebuttable in those individual cases in which the services actually received by the resident do not meet the basic statutory criterion of being reasonable and necessary to diagnose or treat a beneficiary’s condition (according to section 1862(a)(1) of the Act). Accordingly, the presumption would not apply, for example, in those situations in which a resident’s assignment to one of the upper . . . groups is itself based on the receipt of services that are subsequently determined to be not reasonable and necessary.”

Moreover, we want to stress the importance of careful monitoring for changes in each patient’s condition to determine the continuing need for Part A SNF benefits after the ARD of the 5-day assessment.

In connection with the administrative level of care presumption, we now propose to amend the existing regulations text at § 413.345 by removing the parenthetical phrase “(including the designation of those specific Resource Utilization Groups under the resident classification system that represent the required SNF level of care, as provided in § 409.30 of this chapter)” that currently appears in the second sentence of § 413.345. The proposed deletion of the current reference to publishing such material annually in the **Federal Register**, along with the specific reference to “Resource Utilization Groups,” would serve to

conform the text of these regulations more closely to that of the corresponding statutory language at section 1888(e)(4)(H)(ii) of the Act, which refers in more general terms to the applicable “case mix classification system.” Moreover, we note that the recurring announcements in the **Federal Register** of the administrative presumption’s designated groups as part of each annual update of the SNF PPS rates has in actual practice proven to be largely a formality, resulting in exactly the same designated groups repetitively being promulgated routinely year after year. Accordingly, we now propose instead to disseminate this standard description of the administrative presumption’s designated groups exclusively through the SNF PPS Web site, and to announce such designations in rulemaking only in the event that we are actually proposing to make changes in them.

Along with this proposed revision, we also propose to make appropriate conforming revisions in other portions of the regulations text. Specifically, we propose to remove from the introductory text of § 409.30, the parenthetical phrase “(in the annual publication of Federal prospective payment rates described in § 413.345 of this chapter)” for the same reasons we propose to remove the parenthetical phrase from § 413.345 as discussed in this proposed rule. In addition, we propose to replace the phrase to “one of the Resource Utilization Groups that is designated” in § 409.30 introductory text with the phrase “one of the case-mix classifiers CMS designates” to conform more closely with the statutory language in section 1888(e)(4)(G) and (H) of the Act, which refers in more general terms to the “resident classification system” or “case mix classification system,” and to clarify that “CMS” makes these designations. We additionally propose to revise § 409.30 to reflect more clearly our longstanding policy that the assignment of a designated case-mix classifier would serve to trigger the administrative presumption only when that assignment is itself correct. As we noted in the FY 2000 SNF PPS final rule (64 FR 41667, July 30, 1999), “. . . the presumption would not apply, for example, in those situations in which a resident’s assignment to one of the upper . . . groups is itself based on the receipt of services that are subsequently determined to be not reasonable and necessary.” We also propose to make similar conforming revisions in the “resident classification system” definition that currently appears in

§ 413.333 to replace “Resource Utilization Groups” with “resident classification system”, as well as in the material in § 424.20(a)(1)(ii) on SNF level of care certifications to replace the phrase “one of the Resource Utilization Groups designated” with “one of the case-mix classifiers that CMS designates,” in both cases to conform more closely with the statutory language in section 1888(e)(4)(G) and (H) of the Act, as discussed in this proposed rule, which refers in more general terms to the “resident classification system” or “case mix classification system,” and to clarify in § 424.20(a)(1)(ii) that “CMS” designates these case-mix classifiers. Finally, regarding the § 424.20, we also propose to revise paragraph (e)(2)(ii)(B)(2) by updating its existing cross-reference to the provision at § 483.40(e) on delegating physician tasks in SNFs, which was recently redesignated as new § 483.30(e) under the revised long-term care facility requirements for participation (81 FR 68861, October 4, 2016).

B. Consolidated Billing

Sections 1842(b)(6)(E) and 1862(a)(18) of the Act (as added by section 4432(b) of the BBA) require a SNF to submit consolidated Medicare bills to its Medicare Administrative Contractor (MAC) for almost all of the services that its residents receive during the course of a covered Part A stay. In addition, section 1862(a)(18) of the Act places the responsibility with the SNF for billing Medicare for physical therapy, occupational therapy, and speech-language pathology services that the resident receives during a noncovered stay. Section 1888(e)(2)(A) of the Act excludes a small list of services from the consolidated billing provision (primarily those services furnished by physicians and certain other types of practitioners), which remain separately billable under Part B when furnished to a SNF’s Part A resident. These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295 through 26297).

A detailed discussion of the legislative history of the consolidated billing provision is available on the SNF PPS Web site at http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Legislative_History_04152015.pdf. In particular, section 103 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (Pub. L. 106–113, enacted on November 29, 1999) (BBRA) amended section 1888(e)(2)(A) of the Act by further excluding a number of individual high-cost, low

probability services, identified by Healthcare Common Procedure Coding System (HCPCS) codes, within several broader categories (chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices) that otherwise remained subject to the provision. We discuss this BBRA amendment in greater detail in the SNF PPS proposed and final rules for FY 2001 (65 FR 19231 through 19232, April 10, 2000, and 65 FR 46790 through 46795, July 31, 2000), as well as in Program Memorandum AB-00-18 (Change Request #1070), issued March 2000, which is available online at www.cms.gov/transmittals/downloads/ab001860.pdf.

As explained in the FY 2001 proposed rule (65 FR 19232), the amendments enacted in section 103 of the BBRA not only identified for exclusion from this provision a number of particular service codes within four specified categories (that is, chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices), but also gave the Secretary the authority to designate additional, individual services for exclusion within each of the specified service categories. In the proposed rule for FY 2001, we also noted that the BBRA Conference report (H.R. Rep. No. 106-479 at 854 (1999) (Conf. Rep.)) characterizes the individual services that this legislation targets for exclusion as high-cost, low probability events that could have devastating financial impacts because their costs far exceed the payment SNFs receive under the PPS. According to the conferees, section 103(a) of the BBRA is an attempt to exclude from the PPS certain services and costly items that are provided infrequently in SNFs. By contrast, the amendments enacted in section 103 of the BBRA do not designate for exclusion any of the remaining services within those four categories (thus, leaving all of those services subject to SNF consolidated billing), because they are relatively inexpensive and are furnished routinely in SNFs.

As we further explained in the final rule for FY 2001 (65 FR 46790), and as is consistent with our longstanding policy, any additional service codes that we might designate for exclusion under our discretionary authority must meet the same statutory criteria used in identifying the original codes excluded from consolidated billing under section 103(a) of the BBRA: They must fall within one of the four service categories specified in the BBRA; and they also must meet the same standards of high cost and low probability in the SNF setting, as discussed in the BBRA

Conference report. Accordingly, we characterized this statutory authority to identify additional service codes for exclusion as essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance that may occur over time (for example, the development of new medical technologies or other advances in the state of medical practice) (65 FR 46791). In this proposed rule, we specifically invite public comments identifying HCPCS codes in any of these four service categories (chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices) representing recent medical advances that might meet our criteria for exclusion from SNF consolidated billing. We may consider excluding a particular service if it meets our criteria for exclusion as specified above. Commenters should identify in their comments the specific HCPCS code that is associated with the service in question, as well as their rationale for requesting that the identified HCPCS code(s) be excluded.

We note that the original BBRA amendment (as well as the implementing regulations) identified a set of excluded services by means of specifying HCPCS codes that were in effect as of a particular date (in that case, as of July 1, 1999). Identifying the excluded services in this manner made it possible for us to utilize program issuances as the vehicle for accomplishing routine updates of the excluded codes, to reflect any minor revisions that might subsequently occur in the coding system itself (for example, the assignment of a different code number to the same service). Accordingly, in the event that we identify through the current rulemaking cycle any new services that would actually represent a substantive change in the scope of the exclusions from SNF consolidated billing, we would identify these additional excluded services by means of the HCPCS codes that are in effect as of a specific date (in this case, as of October 1, 2017). By making any new exclusions in this manner, we could similarly accomplish routine future updates of these additional codes through the issuance of program instructions.

In addition, we note that one category of services which consolidated billing excludes under the regulations at § 411.15(p)(3) consists of certain exceptionally intensive types of outpatient hospital services. As we explained in the FY 2000 SNF PPS final rule, this exclusion applies to “. . . those types of outpatient hospital

services that *we specifically identify* as being beyond the scope of SNF care plans generally” (64 FR 41676, July 30, 1999, emphasis added). To further clarify this longstanding policy noted above that the outpatient hospital exclusion applies solely to those services that we specifically designate for this purpose, we are proposing to revise § 411.15(p)(3)(iii) to state this more explicitly. In addition, we note that recent revisions in the long-term care facility requirements for participation (81 FR 68858, October 4, 2016) have moved the comprehensive care plan regulations from their previous location at § 483.20(k) to a new, redesignated § 483.21(b); accordingly, we also propose to make a conforming revision in the existing cross-reference to that provision that appears in the regulations text at § 411.15(p)(3)(iii).

C. Payment for SNF-Level Swing-Bed Services

Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute- or SNF-level care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF-level services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, SNF-level services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. As explained in the FY 2002 final rule (66 FR 39562), this effective date is consistent with the statutory provision to integrate swing-bed rural hospitals into the SNF PPS by the end of the transition period, June 30, 2002.

Accordingly, all non-CAH swing-bed rural hospitals have now come under the SNF PPS. Therefore, all rates and wage indexes outlined in earlier sections of this proposed rule for the SNF PPS also apply to all non-CAH swing-bed rural hospitals. A complete discussion of assessment schedules, the MDS, and the transmission software (RAVEN-SB for Swing Beds) appears in the FY 2002 final rule (66 FR 39562) and in the FY 2010 final rule (74 FR 40288). As finalized in the FY 2010 SNF PPS final rule (74 FR 40356 through 40357), effective October 1, 2010, non-CAH swing-bed rural hospitals are required to complete an MDS 3.0 swing-bed assessment which is limited to the required demographic, payment, and quality items. The latest changes in the MDS for swing-bed rural hospitals appear on the SNF PPS Web site at

<http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html>.

V. Other Issues

A. Revising and Rebased the SNF Market Basket Index

Section 1888(e)(5)(A) of the Act requires the Secretary to establish a market basket index that reflects the changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. We use the SNF market basket index, adjusted in the manner described in section III.B of this proposed rule, to update the SNF PPS per diem rates and to determine the labor-related share on an annual basis.

The SNF market basket is a fixed-weight, Laspeyres-type price index. A Laspeyres price index measures the change in price, over time, of the same mix of goods and services purchased in the base period. Any changes in the quantity or mix of goods and services (that is, intensity) purchased over time relative to a base period are not measured.

The index itself is constructed in three steps. First, a base period is selected (in this proposed rule, the base period is 2014) and total base period expenditures are estimated for a set of mutually exclusive and exhaustive spending categories with the proportion of total costs that each category represents being calculated. These proportions are called cost or expenditure weights. Second, each expenditure category is matched to an appropriate price or wage variable, referred to as a price proxy. In nearly every instance, these price proxies are derived from publicly available statistical series that are published on a consistent schedule (preferably at least on a quarterly basis). Finally, the expenditure weight for each cost category is multiplied by the level of its respective price proxy. The sum of these products (that is, the expenditure weights multiplied by their price levels) for all cost categories yields the composite index level of the market basket in a given period. Repeating this step for other periods produces a series of market basket levels over time. Dividing an index level for a given period by an index level for an earlier period produces a rate of growth in the input price index over that timeframe.

Effective for cost reporting periods beginning on or after July 1, 1998, we revised and rebased our 1977 routine costs input price index and adopted a total expenses SNF input price index using FY 1992 as the base year. In the FY 2002 SNF PPS final rule (66 FR 39582), we rebased and revised the market basket to a base year of FY 1997. In the FY 2008 SNF PPS final rule (72 FR 43425), we rebased and revised the market basket to a base year of FY 2004. In the FY 2014 SNF PPS final rule (78 FR 47939), we last revised and rebased the SNF market basket, which included updating the base year from FY 2004 to FY 2010. For FY 2018, we are proposing to rebase the market basket to reflect 2014 Medicare-allowable total cost data (routine, ancillary, and capital-related) from freestanding SNFs and to revise applicable cost categories and price proxies used to determine the market basket. We propose to maintain our policy of using data from freestanding SNFs, which represent 93 percent of the total SNFs shown in Table 25. We believe using freestanding MCR data, as opposed to the hospital-based SNF MCR data, for the proposed cost weight calculation is most appropriate because of the complexity of hospital-based data and the representativeness of the freestanding data. Hospital-based SNF expenses, are embedded in the hospital cost report. Any attempt to incorporate data from hospital-based facilities requires more complex calculations and assumptions regarding the ancillary costs related to the hospital-based SNF unit. We believe the use of freestanding SNF cost report data is technically appropriate for reflecting the cost structures of SNFs serving Medicare beneficiaries.

We are proposing to use 2014 as the base year. We believe that the 2014 Medicare cost reports represent the most recent, complete set of Medicare cost report (MCR) data available to develop cost weights for SNFs at the time of rulemaking. The 2014 Medicare cost reports are for cost reporting periods beginning on and after October 1, 2013 and before October 1, 2014. While these dates appear to reflect fiscal year data, we note that a Medicare cost report that begins in this timeframe is generally classified as a “2014 cost report.” For example, we found that of the available 2014 Medicare cost reports for SNFs, approximately 7 percent had an October 1, 2013 begin date, approximately 70 percent of the reports had a January 1, 2014 begin date, and approximately 12 percent had a July 1, 2014 begin date. For this reason, and for the reasons explained below, we are defining the

base year of the market basket as “2014-based” instead of “FY 2014-based”.

Specifically, we are proposing to develop cost category weights for the 2014-based SNF market basket in two stages. First, we are proposing to derive eight major expenditures or cost weights from the 2014 MCR data (CMS Form 2540–10) for freestanding SNFs: Wages and Salaries; Employee Benefits; Contract Labor; Pharmaceuticals; Professional Liability Insurance; Home Office Contract Labor; Capital-related; and a residual “All Other”. With the exception of the Home Office Contract Labor cost weight, these are the same cost categories calculated using the 2010 MCR data for the FY 2010-based SNF market basket. We provide a detailed discussion of our proposal to use the 2014 MCR data to determine the Home Office Contract Labor cost weight in section IV.A.1.a of this preamble. The residual “All Other” category would reflect all remaining costs that are not captured in the other seven cost categories. Second, we are proposing to divide the residual “All Other” cost category into subcategories, using U.S. Department of Commerce Bureau of Economic Analysis’ (BEA) 2007 Benchmark Input-Output (I–O) “use table before redefinitions, purchaser’s value” for the Nursing and Community Care Facilities industry (NAICS 623A00) aged forward to 2014 using price changes. Furthermore, we are proposing to continue to use the same overall methodology as was used for the FY 2010-based SNF market basket to develop the capital related cost weights of the 2014-based SNF market basket. We note that we are no longer referring to the market basket as a “FY based” market basket and instead refer to the proposed market basket as simply “2014-based.” We are proposing this change in naming convention for the market basket because the base year cost weight data for the proposed market basket does not reflect strictly fiscal year data. For example, the proposed 2014-based SNF market basket uses Medicare cost report data and other government data that reflects fiscal year 2014, calendar year 2014, and state fiscal year 2014 expenses to determine the base year cost weights. Given that it is based on a mix of classifications of 2014 data, we are proposing to refer to the market basket simply as “2014-based” as opposed to a “FY 2014-based” or “CY 2014-based”.

1. Development of Cost Categories and Weights

a. Use of Medicare Cost Report Data To Develop Major Cost Weights

In order to create a market basket that is representative of freestanding SNF providers serving Medicare patients and to help ensure accurate major cost weights (which is the percent of total Medicare allowable costs, as defined below), we propose to apply edits to remove reporting errors and outliers. Specifically, the SNF Medicare Cost Reports used to calculate the market basket cost weights excluded any providers that reported costs less than or equal to zero for the following categories: Total facility costs; total operating costs; Medicare general inpatient routine service costs; and Medicare PPS payments. The final sample used included roughly 96 percent of those providers who submitted a Medicare cost report for 2014.

Additionally, for each of the major cost weights (Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals, Professional Liability Insurance, Home Office Contract Labor, and Capital-related Expenses) the data are trimmed to remove outliers (a standard statistical process) by: (1) Requiring that major expenses (such as Wages and Salaries costs) and total Medicare-allowable costs are greater than zero; and (2) excluding the top and bottom five percent of the major cost weight (for example, Wages and Salaries costs as a percent of total Medicare-allowable costs). This trimming process is done for each cost weight individually and, therefore, providers excluded from one cost weight calculation are not automatically excluded from other cost weight calculations. These are the same types of edits utilized for the FY 2010-based SNF market basket, as well as other PPS market baskets (including but not limited to IPPS market basket and HHA market basket). We believe this trimming process improves the accuracy of the data used to compute the major cost weights by removing possible data misreporting.

Finally, the final weights of the proposed 2014-based SNF market basket are based on weighted means. For example, the final Wages and Salaries cost weight after trimming is equal to the sum of total Medicare-allowable wages and salaries divided by the sum of total Medicare-allowable costs. This methodology is consistent with the methodology used to calculate the FY 2010-based SNF market basket cost

weights and other PPS market basket cost weights.

As stated above, the major cost weights of the proposed 2014-based SNF market basket are derived from 2014 MCR data that is reported on CMS Form 2540–10, effective for freestanding SNFs with a cost reporting period beginning on or after December 1, 2010. The major cost weights for the FY 2010-based SNF market basket were derived from the 2010 MCR data that is reported on CMS Form 2540–96. CMS Form 2540–96 was effective for freestanding SNFs with cost reporting periods beginning on and after October 1, 1997. The OMB control number for both Form 2549–10 and Form 2540–96 is 0938–0463.

For all of the cost weights, we use Medicare allowable-total costs as the denominator (that is, Wages and Salaries cost weight = Wages and Salaries costs divided by Medicare-allowable total costs). Medicare-allowable total costs were equal to total costs (after overhead allocation) from Worksheet B part 1, column 18, for lines 30, 40 through 49, 51, 52, and 71 plus Medicaid drug costs as defined below. We included estimated Medicaid drug costs in the pharmacy cost weight, as well as the denominator for total Medicare-allowable costs. This is the same methodology used for the FY 2010-based SNF market basket and the FY 2004-based SNF market basket. The inclusion of Medicaid drug costs was finalized in the FY 2008 SNF PPS final rule (72 FR 43425 through 43430), and for the same reasons set forth in that final rule, we are proposing to continue to use this methodology in the proposed 2014-based SNF market basket.

We are proposing that for the 2014-based SNF market basket we obtain costs for one additional major cost category from the Medicare cost reports that was not used in the FY 2010-based SNF market basket—Home Office Contract Labor Costs. We describe the detailed methodology for obtaining costs for each of these eight cost categories below. The methodology used is similar to the methodology used in the FY 2010-based SNF market basket, as described in the FY 2014 SNF PPS final rule (78 FR 47940 through 47942).

(1) *Wages and Salaries*: To derive Wages and Salaries costs for the Medicare-allowable cost centers, we are proposing first to calculate total unadjusted wages and salaries costs as reported on Worksheet S–3, part II, column 3, line 1. We are then proposing to remove the wages and salaries attributable to non-Medicare-allowable cost centers (that is, excluded areas), as well as a portion of overhead wages and

salaries attributable to these excluded areas. Excluded area wages and salaries are equal to wages and salaries as reported on Worksheet S–3, part II, column 3, lines 3, 4, and 7 through 11 plus nursing facility and non-reimbursable salaries from Worksheet A, column 1, lines 31, 32, 50, and 60 through 63.

Overhead wages and salaries are attributable to the entire SNF facility; therefore, we are proposing to include only the proportion attributable to the Medicare-allowable cost centers. We are proposing to estimate the proportion of overhead wages and salaries that is attributable to the non-Medicare-allowable cost centers (that is, excluded areas) by multiplying the ratio of excluded area wages and salaries (as defined above) to total wages and salaries as reported on Worksheet S–3, part II, column 3, line 1 by total overhead wages and salaries as reported on Worksheet S3, Part III, column 3, line 14. We used a similar methodology to derive wages and salaries costs in the FY 2010-based SNF market basket.

(2) *Employee Benefits*: Medicare-allowable employee benefits are equal to total benefits as reported on Worksheet S–3, part II, column 3, lines 17 through 19 minus non-Medicare-allowable (that is, excluded area) employee benefits and minus a portion of overhead benefits attributable to these excluded areas. Non-Medicare-allowable employee benefits are derived by multiplying total excluded wages and salaries (as defined above in the ‘Wages and Salaries’ section) times the ratio of total benefit costs as reported on Worksheet S–3, part II, column 3, lines 17 through 19 to total wages and salary costs as reported on Worksheet S3, part II, column 3, line 1. Likewise, the portion of overhead benefits attributable to the excluded areas is derived by multiplying overhead wages and salaries attributable to the excluded areas (as defined in the ‘Wages and Salaries’ section) times the ratio of total benefit costs to total wages and salary costs (as defined above). We used a similar methodology in the FY 2010-based SNF market basket.

(3) *Contract Labor*: We are proposing to derive Medicare-allowable contract labor costs from Worksheet S–3, part II, column 3, line 17, which reflects costs for contracted direct patient care services, that is, nursing, therapeutic, rehabilitative, or diagnostic services furnished under contract rather than by employees and management contract services.

(4) *Pharmaceuticals*: We are proposing to calculate pharmaceuticals costs using the non-salary costs from the Pharmacy cost center (Worksheet B, part

I, column 0, line 11 less Worksheet A, column 1, line 11) and the Drugs Charged to Patients' cost center (Worksheet B, part I, column 0, line 49 less Worksheet A, column 1, line 49). Since these drug costs were attributable to the entire SNF and not limited to Medicare-allowable services, we adjusted the drug costs by the ratio of Medicare-allowable pharmacy total costs (Worksheet B, part I, column 11, for lines 30, 40 through 49, 51, 52, and 71) to total pharmacy costs from Worksheet B, part I, column 11, line 11. Worksheet B, part I allocates the general service cost centers, which are often referred to as "overhead costs" (in which pharmacy costs are included) to the Medicare-allowable and non-Medicare-allowable cost centers.

Second, similar to the FY 2010-based SNF market basket, we propose to continue to adjust the drug expenses reported on the MCR to include an estimate of total Medicaid drug costs, which are not represented in the Medicare-allowable drug cost weight. Similar to the FY 2010-based SNF market basket, we are estimating Medicaid drug costs based on data representing dual-eligible Medicaid beneficiaries. Medicaid drug costs are

estimated by multiplying Medicaid dual-eligible drug costs per day times the number of Medicaid days as reported in the Medicare-allowable skilled nursing cost center (Worksheet S3, part I, column 5, line 1) in the SNF MCR. Medicaid dual-eligible drug costs per day (where the day represents an unduplicated drug supply day) were estimated using a sample of 2014 Part D claims for those dual-eligible beneficiaries who had a Medicare SNF stay during the year. Medicaid dual-eligible beneficiaries would receive their drugs through the Medicare Part D benefit, which would work directly with the pharmacy and, therefore, these costs would not be represented in the Medicare SNF MCRs. A random twenty percent sample of Medicare Part D claims data yielded a Medicaid drug cost per day of \$19.62. We note that the FY 2010-based SNF market basket also relied on data from the Part D claims, which yielded a dual-eligible Medicaid drug cost per day of \$17.39 for 2010.

(5) *Professional Liability Insurance:* We are proposing to calculate the professional liability insurance costs from Worksheet S-2 of the MCRs as the sum of premiums; paid losses; and self-

insurance (Worksheet S-2, column 1 through 3, line 41).

(6) *Capital-Related:* We are proposing to derive the Medicare-allowable capital-related costs from Worksheet B, part II, column 18 for lines 30, 40 through 49, 51, 52, and 71.

(7) *Home Office Contract Labor Costs:* We are proposing to calculate Medicare-allowable home office contract labor costs by multiplying total home office contract labor costs (as reported on Worksheet S3, part 2, column 3, line 16) times the ratio of Medicare-allowable operating costs (Medicare-allowable total costs less Medicare-allowable capital costs) to total operating costs (equal to Worksheet B, part I, column 18, line 100 less Worksheet B, part I, column 0, line 1 and 2).

(8) *All Other (residual):* The "All Other" cost weight is a residual, calculated by subtracting the major cost weights (Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals, Professional Liability Insurance, Home Office Contract Labor, and Capital-Related) from 100.

Table 9 shows the major cost categories and their respective cost weights as derived from the Medicare cost reports for this proposed rule.

TABLE 9—MAJOR COST CATEGORIES AS DERIVED FROM THE MEDICARE COST REPORTS

Major cost categories	Proposed 2014-based	FY 2010-based
Wages and Salaries	44.3	46.1
Employee Benefits	9.3	10.5
Contract Labor	6.8	5.5
Pharmaceuticals	7.3	7.9
Professional Liability Insurance	1.1	1.1
Home Office Contract Labor*	0.7	n/a
Capital-related	7.9	7.4
All other (residual)	22.6	21.5

* Home office contract labor costs were included in the residual "All Other" cost weight of the FY 2010-based SNF market basket.

The Wages and Salaries and Employee Benefits cost weights as calculated directly from the Medicare cost reports decreased by 1.8 and 1.2 percentage points, respectively, while the Contract Labor cost weight increased 1.3 percentage points between the FY 2010-based SNF market basket and 2014-based SNF market basket. The decrease in the Wages and Salaries occurred among most cost centers and in aggregate for the General Service (overhead) and Inpatient Routine Service cost centers, which together account for about 80 percent of total facility costs.

As we did for the FY 2010-based SNF market basket (78 FR 26452), we are proposing to allocate contract labor costs to the Wages and Salaries and Employee Benefits cost weights based on their relative proportions under the assumption that contract labor costs are comprised of both wages and salaries and employee benefits. The contract labor allocation proportion for wages and salaries is equal to the Wages and Salaries cost weight as a percent of the sum of the Wages and Salaries cost weight and the Employee Benefits cost weight. Using the 2014 Medicare cost report data, this percentage is 83

percent; therefore, we are proposing to allocate approximately 83 percent of the Contract Labor cost weight to the Wages and Salaries cost weight and 17 percent to the Employee Benefits cost weight. For the FY 2010-based SNF market basket, the wages and salaries to employee benefit ratio was 81/19 percent.

Table 10 shows the Wages and Salaries and Employee Benefits cost weights after contract labor allocation for the FY 2010-based SNF market basket and the proposed 2014-based SNF market basket.

TABLE 10—WAGES AND SALARIES AND EMPLOYEE BENEFITS COST WEIGHTS AFTER CONTRACT LABOR ALLOCATION

Major cost categories	Proposed 2014-based market basket	FY 2010-based market basket
Wages and Salaries	50.0	50.6
Employee Benefits	10.5	11.5

b. Derivation of the Detailed Operating Cost Weights

To further divide the “All Other” residual cost weight estimated from the 2014 Medicare cost report data into more detailed cost categories, we are proposing to use the 2007 Benchmark I–O “Use Tables/Before Redefinitions/ Purchaser Value” for Nursing and Community Care Facilities industry (NAICS 623A00), published by the Census Bureau’s Bureau of Economic Analysis (BEA). These data are publicly available at the following Web site: <http://www.bea.gov/industry/io/annual.htm>. The BEA Benchmark I–O data are generally scheduled for publication every 5 years with the most recent data available for 2007. The 2007 Benchmark I–O data are derived from the 2007 Economic Census and are the building blocks for BEA’s economic accounts. Therefore, they represent the most comprehensive and complete set of data on the economic processes or mechanisms by which output is produced and distributed.¹ BEA also produces Annual I–O estimates. However, while based on a similar methodology, these estimates reflect less comprehensive and less detailed data sources and are subject to revision when benchmark data become available. Instead of using the less detailed Annual I–O data, we are proposing to inflate the 2007 Benchmark I–O data aged forward to 2014 by applying the annual price changes from the respective price proxies to the appropriate market basket cost categories that are obtained from the 2007 Benchmark I–O data. We repeated this practice for each year. We then calculated the cost shares that each cost category represents of the 2007 data inflated to 2014. These resulting 2014 cost shares were applied to the “All Other” residual cost weight to obtain the detailed cost weights for the proposed 2014-based SNF market basket. For example, the cost for Food: Direct Purchases represents 13.7 percent of the sum of the “All Other” 2007 Benchmark I–O Expenditures inflated to 2014. Therefore, the Food: Direct Purchases cost weight represents 3.1

percent of the proposed 2014-based SNF market basket’s “All Other” cost category ($0.137 \times 22.6 \text{ percent} = 3.1 \text{ percent}$). For the FY 2010-based SNF market basket (78 FR 26456), we used the same methodology utilizing the 2002 Benchmark I–O data (aged to FY 2010).

Using this methodology, we are proposing to derive 21 detailed SNF market basket operating cost category weights from the proposed 2014-based SNF market basket “All Other” residual cost weight (22.6 percent). These categories are: (1) Fuel: Oil and Gas; (2) Electricity; (3) Water and Sewerage; (4) Food: Direct Purchases; (5) Food: Contract Services; (6) Chemicals; (7) Medical Instruments and Supplies; (8) Rubber and Plastics; (9) Paper and Printing Products; (10) Apparel; (11) Machinery and Equipment; (12) Miscellaneous Products; (13) Professional Fees: Labor-Related; (14) Administrative and Facilities Support Services; (15) Installation, Maintenance, and Repair Services; (16) All Other: Labor-Related Services; (17) Professional Fees: Nonlabor-Related; (18) Financial Services; (19) Telephone Services; (20) Postage; and (21) All Other: Nonlabor-Related Services.

We note that the machinery and equipment expenses are for equipment that is paid for in a given year and not depreciated over the asset’s useful life. Depreciation expenses for movable equipment are reflected in the capital component of the proposed 2014-based SNF market basket (described in section IV.A.1.c. of this proposed rule).

We would also note that for ease of reference we are renaming the Nonmedical Professional Fees: Labor-Related and Nonmedical Professional Fees: Nonlabor-related cost categories (as labeled in the FY 2010-based SNF market basket) to be Professional Fees: Labor-Related and Professional Fees: Nonlabor-Related in the proposed 2014-based SNF market basket. These cost categories still represent the same nonmedical professional fees that were included in the FY 2010-based SNF market basket, which we describe in section IV.A.4. of this proposed rule.

For the proposed 2014-based SNF market basket, we also are proposing to include a separate cost category for

Installation, Maintenance, and Repair Services in order to proxy these costs by a price index that better reflects the price changes of labor associated with maintenance-related services. Previously these costs were included in the All Other: Labor-Related Services category of the FY 2010-based SNF market basket.

c. Derivation of the Detailed Capital Cost Weights

Similar to the FY 2010-based SNF market basket, we further divided the Capital-related cost weight into: Depreciation, Interest, Lease and Other Capital-related cost weights.

We calculated the depreciation cost weight (that is, depreciation costs excluding leasing costs) using depreciation costs from Worksheet S–2, column 1, lines 20 and 21. Since the depreciation costs reflect the entire SNF facility (Medicare and non-Medicare-allowable units), we used total facility capital costs as the denominator. This methodology assumes that the depreciation of an asset is the same regardless of whether the asset was used for Medicare or non-Medicare patients. This methodology yielded depreciation as a percent of capital costs of 27.3 percent for 2014. We then apply this percentage to the proposed 2014-based SNF market basket Medicare-allowable Capital-related cost weight of 7.9 percent, yielding a Medicare-allowable depreciation cost weight (excluding leasing expenses, which is described in more detail below) of 2.2 percent. To further disaggregate the Medicare-allowable depreciation cost weight into fixed and moveable depreciation, we are proposing to use the 2014 SNF MCR data for end-of-the-year capital asset balances as reported on Worksheet A7. The 2014 SNF MCR data showed a fixed/moveable split of 83/17. The FY 2010-based SNF market basket, which utilized the same data from the FY 2010 MCRs, had a fixed/moveable split of 85/15.

We also derived the interest expense share of capital-related expenses from 2014 SNF MCR data, specifically from Worksheet A, column 2, line 81. Similar to the depreciation cost weight, we calculated the interest cost weight using total facility capital costs. This

¹ http://www.bea.gov/papers/pdf/IOmanual_092906.pdf.

methodology yielded interest as a percent of capital costs of 27.4 percent for 2014. We then apply this percentage to the proposed 2014-based SNF market basket Medicare-allowable Capital-related cost weight of 7.9 percent, yielding a Medicare-allowable interest cost weight (excluding leasing expenses) of 2.2 percent. As done with the last rebasing (78 FR 26454), we are proposing to determine the split of interest expense between for-profit and not-for-profit facilities based on the distribution of long-term debt outstanding by type of SNF (for-profit or not-for-profit/government) from the 2014 SNF MCR data. We estimated the split between for-profit and not-for-profit interest expense to be 27/73 percent compared to the FY 2010-based SNF market basket with 41/59 percent.

Because the detailed data were not available in the MCRs, we used the most recent 2014 Census Bureau Service Annual Survey (SAS) data to derive the capital-related expenses attributable to leasing and other capital-related

expenses. The FY 2010-based SNF market basket used the 2010 SAS data. Based on the 2014 SAS data, we determined that leasing expenses are 63 percent of total leasing and capital-related expenses costs. In the FY 2010-based SNF market basket, leasing costs represent 62 percent of total leasing and capital-related expenses costs. We then apply this percentage to the proposed 2014-based SNF market basket residual Medicare-allowable capital costs of 3.6 percent derived from subtracting the Medicare-allowable depreciation cost weight and Medicare-allowable interest cost weight from the 2014-based SNF market basket of total Medicare-allowable capital cost weight (7.9 percent – 2.2 percent – 2.2 percent = 3.6 percent). This produces the proposed 2014-based SNF Medicare-allowable leasing cost weight of 2.3 percent and all-other capital-related cost weight of 1.3 percent.

Lease expenses are not broken out as a separate cost category in the SNF market basket, but are distributed

among the cost categories of depreciation, interest, and other capital-related expenses, reflecting the assumption that the underlying cost structure and price movement of leasing expenses is similar to capital costs in general. As was done with past SNF market baskets and other PPS market baskets, we assumed 10 percent of lease expenses are overhead and assigned them to the other capital-related expenses cost category. This is based on the assumption that leasing expenses include not only depreciation, interest, and other capital-related costs but also additional costs paid to the lessor. We distributed the remaining lease expenses to the three cost categories based on the proportion of depreciation, interest, and other capital-related expenses to total capital costs, excluding lease expenses.

Table 11 shows the capital-related expense distribution (including expenses from leases) in the proposed 2014-based SNF market basket and the FY 2010-based SNF market basket.

TABLE 11—COMPARISON OF THE CAPITAL-RELATED EXPENSE DISTRIBUTION OF THE 2014-BASED SNF MARKET BASKET AND THE FY 2010-BASED SNF MARKET BASKET

Cost category	Proposed 2014-based SNF market basket	FY 2010-based SNF market basket
Capital-related Expenses	7.9	7.4
Total Depreciation	2.9	3.2
Total Interest	3.0	2.1
Other Capital-related Expenses	2.0	2.1

Note: The cost weights are calculated using three decimal places. For presentational purposes, we are displaying one decimal and therefore, the detail capital cost weights may not add to the total capital-related expenses cost weight due to rounding.

Table 12 presents the proposed 2014-based SNF market basket and the FY 2010-based SNF market basket.

TABLE 12—PROPOSED 2014-BASED SNF MARKET BASKET AND FY 2010-BASED SNF MARKET BASKET

Cost category	Proposed 2014-based SNF market basket	FY 2010-based SNF market basket
Total	100.0	100.0
Compensation	60.4	62.1
Wages and Salaries ¹	50.0	50.6
Employee Benefits ¹	10.5	11.5
Utilities	2.6	2.2
Electricity	1.2	1.4
Fuel: Oil and Gas	1.3	0.7
Water and Sewerage	0.2	0.1
Professional Liability Insurance	1.1	1.1
All Other	27.9	27.2
Other Products	14.3	16.1
Pharmaceuticals	7.3	7.9
Food: Direct Purchase	3.1	3.7
Food: Contract Purchase	0.7	1.2
Chemicals	0.2	0.2
Medical Instruments and Supplies	0.6	0.8
Rubber and Plastics	0.8	1.0

TABLE 12—PROPOSED 2014-BASED SNF MARKET BASKET AND FY 2010-BASED SNF MARKET BASKET—Continued

Cost category	Proposed 2014-based SNF market basket	FY 2010-based SNF market basket
Paper and Printing Products	0.8	0.8
Apparel	0.3	0.2
Machinery and Equipment	0.3	0.2
Miscellaneous Products	0.3	0.3
All Other Services	13.6	11.0
Labor-Related Services	7.4	6.2
Professional Fees: Labor-related	3.8	3.4
Installation, Maintenance, and Repair Services	0.6	n/a
Administrative and Facilities Support	0.5	0.5
All Other: Labor-Related Services	2.5	2.3
Non Labor-Related Services	6.2	4.8
Professional Fees: Nonlabor-Related	1.8	2.0
Financial Services	2.0	0.9
Telephone Services	0.5	0.6
Postage	0.2	0.2
All Other: Nonlabor-Related Services	1.8	1.1
Capital-Related Expenses	7.9	7.4
Total Depreciation	2.9	3.2
Building and Fixed Equipment	2.5	2.7
Movable Equipment	0.4	0.5
Total Interest	3.0	2.1
For-Profit SNFs	0.8	0.9
Government and Nonprofit SNFs	2.1	1.2
Other Capital-Related Expenses	2.0	2.1

Note: The cost weights are calculated using three decimal places. For presentational purposes, we are displaying one decimal and therefore, the detailed cost weights may not add to the aggregate cost weights or to 100.0 due to rounding.

¹ Contract labor is distributed to wages and salaries and employee benefits based on the share of total compensation that each category represents.

2. Price Proxies Used To Measure Operating Cost Category Growth

After developing the 30 cost weights for the proposed 2014-based SNF market basket, we selected the most appropriate wage and price proxies currently available to represent the rate of change for each expenditure category. With four exceptions (three for the capital-related expenses cost categories and one for Professional Liability Insurance (PLI)), we base the wage and price proxies on Bureau of Labor Statistics (BLS) data, and group them into one of the following BLS categories:

- *Employment Cost Indexes:* Employment Cost Indexes (ECIs) measure the rate of change in employment wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. ECIs are superior to Average Hourly Earnings (AHE) as price proxies for input price indexes because they are not affected by shifts in occupation or industry mix, and because they measure pure price change and are available by both occupational group and by industry. The industry ECIs are based on the 2004 North American Classification System (NAICS).

- *Producer Price Indexes:* Producer Price Indexes (PPIs) measure price changes for goods sold in other than retail markets. PPIs are used when the purchases of goods or services are made at the wholesale level.

- *Consumer Price Indexes:* Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by consumers. CPIs are only used when the purchases are similar to those of retail consumers rather than purchases at the wholesale level, or if no appropriate PPI were available.

We evaluated the price proxies using the criteria of reliability, timeliness, availability, and relevance. Reliability indicates that the index is based on valid statistical methods and has low sampling variability. Widely accepted statistical methods ensure that the data were collected and aggregated in a way that can be replicated. Low sampling variability is desirable because it indicates that the sample reflects the typical members of the population. (Sampling variability is variation that occurs by chance because only a sample was surveyed rather than the entire population.) Timeliness implies that the proxy is published regularly, preferably at least once a quarter. The market baskets are updated quarterly, and therefore, it is important for the underlying price proxies to be up-to-

date, reflecting the most recent data available. We believe that using proxies that are published regularly (at least quarterly, whenever possible) helps to ensure that we are using the most recent data available to update the market basket. We strive to use publications that are disseminated frequently, because we believe that this is an optimal way to stay abreast of the most current data available. Availability means that the proxy is publicly available. We prefer that our proxies are publicly available because this will help ensure that our market basket updates are as transparent to the public as possible. In addition, this enables the public to be able to obtain the price proxy data on a regular basis. Finally, relevance means that the proxy is applicable and representative of the cost category weight to which it is applied. The CPIs, PPIs, and ECIs that we have selected to propose in this regulation meet these criteria. Therefore, we believe that they continue to be the best measure of price changes for the cost categories to which they would be applied.

Table 12 lists all price proxies for the proposed 2014-based SNF market basket. Below is a detailed explanation of the price proxies used for each operating cost category.

- *Wages and Salaries:* We are proposing to use the ECI for Wages and Salaries for Private Industry Workers in Nursing Care Facilities (NAICS 6231; BLS series code CIU20262310000001) to measure price growth of this category. NAICS 623 includes facilities that provide a mix of health and social services, with many of the health services being largely some level of nursing services. Within NAICS 623 is NAICS 6231, which includes nursing care facilities primarily engaged in providing inpatient nursing and rehabilitative services. These facilities, which are most comparable to Medicare-certified SNFs, provide skilled nursing and continuous personal care services for an extended period of time, and, therefore, have a permanent core staff of registered or licensed practical nurses. This is the same index used in the FY 2010-based SNF market basket.

- *Employee Benefits:* We are proposing to use the ECI for Benefits for Nursing Care Facilities (NAICS 6231) to measure price growth of this category. The ECI for Benefits for Nursing Care Facilities is calculated using BLS's total compensation (BLS series ID CIU20162310000001) for nursing care facilities series and the relative importance of wages and salaries within total compensation. We believe this constructed ECI series is technically appropriate for the reason stated above in the Wages and Salaries price proxy section. This is the same index used in the FY 2010-based SNF market basket.

- *Electricity:* We are proposing to use the PPI Commodity for Commercial Electric Power (BLS series code WPU0542) to measure the price growth of this cost category. This is the same index used in the FY 2010-based SNF market basket.

- *Fuel: Oil and Gas:* We are proposing to change the proxy used for the Fuel: Oil and Gas cost category. The FY 2010-based SNF market basket uses the PPI Commodity for Commercial Natural Gas (BLS series code WPU0552) to proxy these expenses. For the proposed 2014-based SNF market basket, we are proposing to use a blend of the PPI Industry for Petroleum Refineries (BLS series code PCU32411–32411) and the

PPI Commodity for Natural Gas (BLS series code WPU0531). Our analysis of the Bureau of Economic Analysis' 2007 Benchmark I–O data for Nursing and Community Care Facilities shows that petroleum refineries expenses accounts for approximately 65 percent and natural gas accounts for approximately 35 percent of the fuel: Oil and gas expenses. Therefore, we are proposing a blended proxy of 65 percent of the PPI Industry for Petroleum Refineries (BLS series code PCU32411–32411) and 35 percent of the PPI Commodity for Natural Gas (BLS series code WPU0531). We believe that these two price proxies are the most technically appropriate indices available to measure the price growth of the Fuel: Oil and Gas category in the proposed 2014-based SNF market basket.

- *Water and Sewerage:* We are proposing to use the CPI All Urban for Water and Sewerage Maintenance (BLS series code CUUR0000SEHG01) to measure the price growth of this cost category. This is the same index used in the FY 2010-based SNF market basket.

- *Professional Liability Insurance:* We are proposing to use the CMS Hospital Professional Liability Insurance Index to measure price growth of this category. We were unable to find a reliable data source that collects SNF-specific PLI data. Therefore, we are proposing to use the CMS Hospital Professional Liability Index, which tracks price changes for commercial insurance premiums for a fixed level of coverage, holding non-price factors constant (such as a change in the level of coverage). This is the same index used in the FY 2010-based SNF market basket. We believe this is an appropriate proxy to measure the price growth associated of SNF professional liability insurance as it captures the price inflation associated with other medical institutions that serve Medicare patients.

- *Pharmaceuticals:* We are proposing to use the PPI Commodity for Pharmaceuticals for Human Use, Prescription (BLS series code WPUSI07003) to measure the price growth of this cost category. This is the same index used in the FY 2010-based SNF market basket.

- *Food: Wholesale Purchases:* We are proposing to use the PPI Commodity for Processed Foods and Feeds (BLS series code WPU02) to measure the price growth of this cost category. This is the same index used in the FY 2010-based SNF market basket.

- *Food: Retail Purchase:* We are proposing to use the CPI All Urban for Food Away From Home (All Urban Consumers) (BLS series code CUUR0000SEFV) to measure the price growth of this cost category. This is the same index used in the FY 2010-based SNF market basket.

- *Chemicals:* For measuring price change in the Chemicals cost category, we are proposing to use a blended PPI composed of the Industry PPIs for Other Basic Organic Chemical Manufacturing (NAICS 325190) (BLS series code PCU32519–32519), Soap and Cleaning Compound Manufacturing (NAICS 325610) (BLS series code PCU32561–32561), and Other Miscellaneous Chemical Product Manufacturing (NAICS 3259A0) (BLS series code PCU325998325998).

Using the 2007 Benchmark I–O data, we found that these three NAICS industries accounted for approximately 96 percent of SNF chemical expenses. The remaining four percent of SNF chemical expenses are for three other incidental NAICS chemicals industries such as Paint and Coating Manufacturing. We are proposing to create a blended index based on those three NAICS chemical expenses listed above that account for 96 percent of SNF chemical expenses. We are proposing to create this blend based on each NAICS' expenses as a share of their sum. These expenses as a share of their sum are listed in Table 13.

The FY 2010-based SNF market basket also used a blended chemical proxy that was based on 2002 Benchmark I–O data. We believe our proposed chemical blended index for the 2014-based SNF market basket is technically appropriate as it reflects more recent data on SNFs purchasing patterns. Table 13 provides the weights for the proposed 2014-based blended chemical index and the FY 2010-based blended chemical index.

TABLE 13—PROPOSED CHEMICAL BLENDED INDEX WEIGHTS

NAICS	Industry description	2014-based index (percent)	2010-based index (percent)
325190	Other basic organic chemical manufacturing	22	7
25510	Paint and coating manufacturing	n/a	12
325610	Soap and cleaning compound manufacturing	37	49
3259A0	Other miscellaneous chemical product manufacturing	41	32

TABLE 13—PROPOSED CHEMICAL BLENDED INDEX WEIGHTS—Continued

NAICS	Industry description	2014-based index (percent)	2010-based index (percent)
	Total	100	100

- Medical Instruments and Supplies:** We are proposing to use a blend for the Medical Instruments and Supplies cost category. The 2007 Benchmark I–O data shows an approximate 60/40 split between ‘Medical and Surgical Appliances and Supplies’ and ‘Surgical and Medical Instruments’. Therefore, we are proposing a blend composed of 60 percent of the PPI Commodity for Medical and Surgical Appliances and Supplies (BLS series code WPU1563) and 40 percent of the PPI Commodity for Surgical and Medical Instruments (BLS series code WPU1562).

The FY 2010-based SNF market basket used the single, higher level PPI Commodity for Medical, Surgical, and Personal Aid Devices (BLS series code WPU156). We believe that the proposed price proxy better reflects the mix of expenses for this cost category as obtained from the 2007 Benchmark I–O data.

- Rubber and Plastics:** We are proposing to use the PPI Commodity for Rubber and Plastic Products (BLS series code WPU07) to measure price growth of this cost category. This is the same index used in the FY 2010-based SNF market basket.

- Paper and Printing Products:** We are proposing to use the PPI Commodity for Converted Paper and Paperboard Products (BLS series code WPU0915) to measure the price growth of this cost category. This is the same index used in the FY 2010-based SNF market basket.

- Apparel:** We are proposing to use the PPI Commodity for Apparel (BLS series code WPU0381) to measure the price growth of this cost category. This is the same index used in the FY 2010-based SNF market basket.

- Machinery and Equipment:** We are proposing to use the PPI Commodity for Machinery and Equipment (BLS series code WPU11) to measure the price growth of this cost category. This is the same index used in the FY 2010-based SNF market basket.

- Miscellaneous Products:** For measuring price change in the Miscellaneous Products cost category, we are proposing to use the PPI Commodity for Finished Goods less Food and Energy (BLS series code WPUFD4131). Both food and energy are already adequately represented in separate cost categories and should not

also be reflected in this cost category. This is the same index used in the FY 2010-based SNF market basket.

- Professional Fees: Labor-Related:** We are proposing to use the ECI for Total Compensation for Private Industry Workers in Professional and Related (BLS series code CIU2010000120000I) to measure the price growth of this category. This is the same index used in the FY 2010-based SNF market basket (which was called the Nonmedical Professional Fees: Labor-Related cost category).

- Administrative and Facilities Support Services:** We are proposing to use the ECI for Total Compensation for Private Industry Workers in Office and Administrative Support (BLS series code CIU2010000220000I) to measure the price growth of this category. This is the same index used in the FY 2010-based SNF market basket.

- Installation, Maintenance and Repair Services:** We are proposing to include a separate cost category for Installation, Maintenance, and Repair Services in order to proxy these costs by a price index that better reflects the price changes of labor associated with maintenance-related services. We are proposing to use the ECI for Total Compensation for All Civilian Workers in Installation, Maintenance, and Repair (BLS series code CIU1010000430000I) to measure the price growth of this new cost category. Previously these costs were included in the All Other: Labor-Related Services category and were proxied by the ECI for Total Compensation for Private Industry Workers in Service Occupations (BLS series code CIU2010000300000I).

- All Other: Labor-Related Services:** We are proposing to use the ECI for Total Compensation for Private Industry Workers in Service Occupations (BLS series code CIU2010000300000I) to measure the price growth of this cost category. This is the same index used in the FY 2010-based SNF market basket.

- Professional Fees: NonLabor-Related:** We are proposing to use the ECI for Total Compensation for Private Industry Workers in Professional and Related (BLS series code CIU2010000120000I) to measure the price growth of this category. This is the same index used in the FY 2010-based SNF market basket (which was called

the Nonmedical Professional Fees: Nonlabor-Related cost category).

- Financial Services:** We are proposing to use the ECI for Total Compensation for Private Industry Workers in Financial Activities (BLS series code CIU201520A000000I) to measure the price growth of this cost category. This is the same index used in the FY 2010-based SNF market basket.

- Telephone Services:** We are proposing to use the CPI All Urban for Telephone Services (BLS series code CUUR0000SEED) to measure the price growth of this cost category. This is the same index used in the FY 2010-based SNF market basket.

- Postage:** We are proposing to use the CPI All Urban for Postage (BLS series code CUUR0000SEEC) to measure the price growth of this cost category. This is the same index used in the FY 2010-based SNF market basket.

- All Other: NonLabor-Related Services:** We are proposing to use the CPI All Urban for All Items Less Food and Energy (BLS series code CUUR0000SA0L1E) to measure the price growth of this cost category. This is the same index used in the FY 2010-based SNF market basket.

3. Price Proxies Used To Measure Capital Cost Category Growth

We are proposing to apply the same price proxies as were used in the FY 2010-based SNF market basket, and below is a detailed explanation of the price proxies used for each capital cost category. We also are proposing to continue to vintage weight the capital price proxies for Depreciation and Interest to capture the long-term consumption of capital. This vintage weighting method is the same method that was used for the FY 2010-based SNF market basket and is described below.

- Depreciation—Building and Fixed Equipment:** We are proposing to use the BEA Chained Price Index for Private Fixed Investment in Structures, Nonresidential, Hospitals and Special Care (BEA Table 5.4.4. Price Indexes for Private Fixed Investment in Structures by Type). This BEA index is intended to capture prices for construction of facilities such as hospitals, nursing homes, hospices, and rehabilitation centers.

- *Depreciation—Movable Equipment:* We are proposing to use the PPI Commodity for Machinery and Equipment (BLS series code WPU11). This price index reflects price inflation associated with a variety of machinery and equipment that would be utilized by SNFs including but not limited to medical equipment, communication equipment, and computers.

- *Nonprofit Interest:* We are proposing to use the average yield on Municipal Bonds (Bond Buyer 20-bond index).

- *For-Profit Interest:* We are proposing to use the average yield on Moody's AAA corporate bonds (Federal Reserve). We are proposing different proxies for the interest categories because we believe interest price pressures differ between nonprofit and for-profit facilities.

- *Other Capital:* Since this category includes fees for insurances, taxes, and other capital-related costs, we are proposing to use the CPI All Urban for Owners' Equivalent Rent of Primary Residence (BLS series code CUUR0000SEHC01), which would reflect the price growth of these costs.

We believe that these price proxies continue to be the most appropriate proxies for SNF capital costs that meet our selection criteria of relevance, timeliness, availability, and reliability.

As stated above, we are proposing to continue to vintage weight the capital price proxies for Depreciation and Interest to capture the long-term consumption of capital. To capture the long-term nature, the price proxies are vintage-weighted; and the vintage weights are calculated using a two-step process. First, we determine the expected useful life of capital and debt instruments held by SNFs. Second, we identify the proportion of expenditures within a cost category that is attributable to each individual year over the useful life of the relevant capital assets, or the vintage weights.

We rely on Bureau of Economic Analysis (BEA) fixed asset data to derive the useful lives of both fixed and movable capital, which is the same data source used to derive the useful lives for the FY 2010-based SNF market basket. The specifics of the data sources used are explained below.

a. Calculating Useful Lives for Moveable and Fixed Assets

Estimates of useful lives for movable and fixed assets for the proposed 2014-based SNF market basket are 10 and 23 years, respectively. These estimates are based on three data sources from the BEA: (1) Current-cost average age; (2) historical-cost average age; and (3)

industry-specific current cost net stocks of assets.

BEA current-cost and historical-cost average age data by asset type are not available by industry but are published at the aggregate level for all industries. The BEA does publish current-cost net capital stocks at the detailed asset level for specific industries. There are 61 detailed movable assets (including intellectual property) and there are 32 detailed fixed assets in the BEA estimates. Since we seek aggregate useful life estimates applicable to SNFs, we developed a methodology to approximate movable and fixed asset ages for nursing and residential care services (NAICS 623) using the published BEA data. For the proposed FY 2014 SNF market basket, we use the current-cost average age for each asset type from the BEA fixed assets Table 2.9 for all assets and weight them using current-cost net stock levels for each of these asset types in the nursing and residential care services industry, NAICS 6230. (For example, nonelectro medical equipment current-cost net stock (accounting for about 37 percent of total moveable equipment current-cost net stock in 2014) is multiplied by an average age of 4.7 years. Current-cost net stock levels are available for download from the BEA Web site at <http://www.bea.gov/national/FA2004/Details/Index.html>. We then aggregate the "weighted" current-cost net stock levels (average age multiplied by current-cost net stock) into moveable and fixed assets for NAICS 6230. We then adjust the average ages for moveable and fixed assets by the ratio of historical-cost average age (Table 2.10) to current-cost average age (Table 2.9).

This produces historical cost average age data for movable (equipment and intellectual property) and fixed (structures) assets specific to NAICS 6230 of 4.8 and 11.6 years, respectively. The average age reflects the average age of an asset at a given point in time, whereas we want to estimate a useful life of the asset, which would reflect the average over all periods an asset is used. To do this, we multiply each of the average age estimates by two to convert to average useful lives with the assumption that the average age is normally distributed (about half of the assets are below the average at a given point in time, and half above the average at a given point in time). This produces estimates of likely useful lives of 9.6 and 23.2 years for movable and fixed assets, which we round to 10 and 23 years, respectively. We are proposing an interest vintage weight time span of 21 years, obtained by weighting the

fixed and movable vintage weights (23 years and 10 years, respectively) by the fixed and movable split (87 percent and 13 percent, respectively). This is the same methodology used for the FY 2010-based SNF market basket which had useful lives of 22 years and 6 years for fixed and moveable assets, respectively. The impact of revising the useful life for moveable assets from 6 years to 10 years had little to no impact on the growth rate of the proposed 2014-based SNF market basket capital cost weight. Over the 2014 to 2026 time period, the impact on the growth rate of the capital cost weight was no larger than 0.01 percent in absolute terms.

b. Constructing Vintage Weights

Given the expected useful life of capital (fixed and moveable assets) and debt instruments, we must determine the proportion of capital expenditures attributable to each year of the expected useful life for each of the three asset types: Building and fixed equipment, moveable equipment, and interest. These proportions represent the vintage weights. We were not able to find a historical time series of capital expenditures by SNFs. Therefore, we approximated the capital expenditure patterns of SNFs over time, using alternative SNF data sources. For building and fixed equipment, we used the stock of beds in nursing homes from the National Nursing Home Survey (NNHS) conducted by the National Center for Health Statistics (NCHS) for 1962 through 1999. For 2000 through 2010, we extrapolated the 1999 bed data forward using a 5-year moving average of growth in the number of beds from the SNF MCR data. For 2011 to 2014, we propose to extrapolate the 2010 bed data forward using the average growth in the number of beds over the 2011 to 2014 time period. We then used the change in the stock of beds each year to approximate building and fixed equipment purchases for that year. This procedure assumes that bed growth reflects the growth in capital-related costs in SNFs for building and fixed equipment. We believe that this assumption is reasonable because the number of beds reflects the size of a SNF, and as a SNF adds beds, it also likely adds fixed capital.

As was done for the FY 2010-based SNF market basket (as well as prior market baskets), we are proposing to estimate moveable equipment purchases based on the ratio of ancillary costs to routine costs. The time series of the ratio of ancillary costs to routine costs for SNFs measures changes in intensity in SNF services, which are assumed to be associated with movable equipment

purchase patterns. The assumption here is that as ancillary costs increase compared to routine costs, the SNF caseload becomes more complex and would require more movable equipment. The lack of movable equipment purchase data for SNFs over time required us to use alternative SNF data sources. A more detailed discussion of this methodology was published in the FY 2008 SNF final rule (72 FR 43428). We believe the resulting two time series, determined from beds and the ratio of ancillary to routine costs, reflect real capital purchases of building and fixed equipment and movable equipment over time.

To obtain nominal purchases, which are used to determine the vintage weights for interest, we converted the two real capital purchase series from

1963 through 2014 determined above to nominal capital purchase series using their respective price proxies (the BEA Chained Price Index for Nonresidential Construction for Hospitals & Special Care Facilities and the PPI for Machinery and Equipment). We then combined the two nominal series into one nominal capital purchase series for 1963 through 2014. Nominal capital purchases are needed for interest vintage weights to capture the value of debt instruments.

Once we created these capital purchase time series for 1963 through 2014, we averaged different periods to obtain an average capital purchase pattern over time: (1) For building and fixed equipment, we averaged 30, 23-year periods; (2) for movable equipment, we averaged 43, 10-year periods; and (3)

for interest, we averaged 32, 21-year periods. We calculate the vintage weight for a given year by dividing the capital purchase amount in any given year by the total amount of purchases during the expected useful life of the equipment or debt instrument. To provide greater transparency, we posted on the CMS market basket Web site at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.html>, an illustrative spreadsheet that contains an example of how the vintage-weighted price indexes are calculated.

The vintage weights for the proposed 2014-based SNF market basket and the FY 2010-based SNF market basket are presented in Table 14.

TABLE 14—PROPOSED 2014-BASED VINTAGE WEIGHTS AND FY 2010-BASED VINTAGE WEIGHTS

Year ¹	Building and fixed equipment		Movable equipment		Interest	
	Proposed 2014-based 23 years	FY 2010-based 25 years	Proposed 2014-based 10 years	FY 2010-based 6 years	Proposed 2014-based 21 years	FY 2010-based 22 years
1	.056	.061	.085	.165	.032	.030
2	.055	.059	.087	.160	.033	.030
3	.054	.053	.091	.167	.034	.032
4	.052	.050	.097	.167	.036	.033
5	.049	.046	.099	.169	.037	.035
6	.046	.043	.102	.171	.039	.037
7	.044	.041	.108		.041	.039
8	.043	.039	.109		.043	.040
9	.040	.036	.110		.044	.041
10	.038	.034	.112		.045	.043
11	.038	.034			.048	.045
12	.039	.034			.052	.047
13	.039	.033			.056	.048
14	.039	.032			.058	.048
15	.039	.031			.060	.050
16	.039	.031			.059	.052
17	.040	.032			.057	.055
18	.041	.034			.057	.058
19	.043	.035			.056	.060
20	.042	.036			.056	.060
21	.042	.038			.057	.058
22	.042	.039				.058
23	.042	.042				
24		.043				
25		.044				
26						
Total	1.000	1.000	1.000	1.000	1.000	1.000

Note: The vintage weights are calculated using thirteen decimals. For presentational purposes, we are displaying three decimals and therefore, the detail vintage weights may not add to 1.000 due to rounding.

¹ Year 1 represents the vintage weight applied to the farthest year while the vintage weight for year 23, for example, would apply to the most recent year.

Table 15 shows all the price proxies for the proposed 2014-based SNF market basket.

TABLE 15—PROPOSED PRICE PROXIES FOR THE PROPOSED 2014-BASED SNF MARKET BASKET

Cost category	Weight	Proposed price proxy
Total	100.0	

TABLE 15—PROPOSED PRICE PROXIES FOR THE PROPOSED 2014-BASED SNF MARKET BASKET—Continued

Cost category	Weight	Proposed price proxy
Compensation	60.4	
Wages and Salaries ¹	50.0	ECI for Wages and Salaries for Private Industry Workers in Nursing Care Facilities.
Employee Benefits ¹	10.5	ECI for Total Benefits for Private Industry Workers in Nursing Care Facilities.
Utilities	2.6	
Electricity	1.2	PPI Commodity for Commercial Electric Power.
Fuel: Oil and Gas	1.3	Blend of Fuel PPIs.
Water and Sewerage	0.2	CPI for Water and Sewerage Maintenance (All Urban Consumers).
Professional Liability Insurance	1.1	CMS Professional Liability Insurance Premium Index.
All Other	27.9	
Other Products	14.3	
Pharmaceuticals	7.3	PPI Commodity for Pharmaceuticals for Human Use, Prescription.
Food: Direct Purchase	3.1	PPI Commodity for Processed Foods and Feeds.
Food: Contract Purchase	0.7	CPI for Food Away From Home (All Urban Consumers).
Chemicals	0.2	Blend of Chemical PPIs.
Medical Instruments and Supplies	0.6	Blend of Medical Instruments and Supplies PPIs.
Rubber and Plastics	0.8	PPI Commodity for Rubber and Plastic Products.
Paper and Printing Products	0.8	PPI Commodity for Converted Paper and Paperboard Products.
Apparel	0.3	PPI Commodity for Apparel.
Machinery and Equipment	0.3	PPI Commodity for Machinery and Equipment.
Miscellaneous Products	0.3	PPI Commodity for Finished Goods Less Food and Energy.
All Other Services	13.6	
Labor-Related Services	7.4	
Professional Fees: Labor-related	3.8	ECI for Total Compensation for Private Industry Workers in Professional and Related.
Installation, Maintenance, and Repair Services	0.6	ECI for Total Compensation for All Civilian workers in Installation, Maintenance, and Repair.
Administrative and Facilities Support	0.5	ECI for Total Compensation for Private Industry Workers in Office and Administrative Support.
All Other: Labor-Related Services	2.5	ECI for Total Compensation for Private Industry Workers in Service Occupations.
Non Labor-Related Services	6.2	
Professional Fees: Nonlabor-related	1.8	ECI for Total Compensation for Private Industry Workers in Professional and Related.
Financial Services	2.0	ECI for Total Compensation for Private Industry Workers in Financial Activities.
Telephone Services	0.5	CPI for Telephone Services.
Postage	0.2	CPI for Postage.
All Other: Nonlabor-Related Services	1.8	CPI for All Items Less Food and Energy.
Capital-Related Expenses	7.9	
Total Depreciation	2.9	
Building and Fixed Equipment	2.5	BEA's Chained Price Index for Private Fixed Investment in Structures, Nonresidential, Hospitals and Special Care—vintage weighted 23 years.
Movable Equipment	0.4	PPI Commodity for Machinery and Equipment—vintage weighted 10 years.
Total Interest	3.0	
For-Profit SNFs	0.8	Moody's—Average yield on Aaa bonds, vintage weighted 21 years.
Government and Nonprofit SNFs	2.1	Moody's—Average yield on Domestic Municipal Bonds—vintage weighted 21 years.
Other Capital-Related Expenses	2.0	CPI for Owners' Equivalent Rent of Primary Residence.

Note: The cost weights are calculated using three decimal places. For presentational purposes, we are displaying one decimal and, therefore, the detailed cost weights may not add to the aggregate cost weights or to 100.0 due to rounding.

¹ Contract labor is distributed to wages and salaries and employee benefits based on the share of total compensation that each category represents.

4. Labor-Related Share

We define the labor-related share (LRS) as those expenses that are labor-intensive and vary with, or are influenced by, the local labor market. Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost

categories in the input price index. Effective for FY 2018, we are proposing to revise and update the labor-related share to reflect the relative importance of the proposed 2014-based SNF market basket cost categories that we believe are labor-intensive and vary with, or are influenced by, the local labor market.

For the proposed 2014-based SNF market basket these are: (1) Wages and Salaries (including allocated contract labor costs as described above); (2) Employee Benefits (including allocated contract labor costs as described above); (3) Professional fees: Labor-related; (4) Administrative and Facilities Support

Services; (5) Installation, Maintenance, and Repair services; (6) All Other: Labor-Related Services; and (7) a proportion of capital-related expenses. We propose to continue to include a proportion of capital-related expenses because a portion of these expenses are deemed to be labor-intensive and vary with, or are influenced by, the local labor market. For example, a proportion of construction costs for a medical building would be attributable to local construction workers' compensation expenses.

Consistent with previous SNF market basket revisions and rebasings, the All Other: Labor-related services cost category is mostly comprised of building maintenance and security services (including, but not limited to, landscaping services, janitorial services, waste management services, and investigation and security services). Because these services tend to be labor-intensive and are mostly performed at the SNF facility (and therefore, unlikely to be purchased in the national market), we believe that they meet our definition of labor-related services.

The proposed inclusion of the Installation, Maintenance, and Repair Services cost category into the labor-related share remains consistent with the current labor-related share, since this cost category was previously included in the FY 2010-based SNF market basket All Other: Labor-related Services cost category. We proposed to establish a separate Installation, Maintenance, and Repair Services cost category so that we can use the ECI for Total Compensation for All Civilian Workers in Installation, Maintenance, and Repair to reflect the specific price changes associated with these services. We also use this cost category in the 2012-based IRF market basket (80 FR 47059), 2012-based IPF market basket (80 FR 46667), and 2013-based LTCH market basket (81 FR 57091).

As discussed in the FY 2014 SNF PPS proposed rule (78 FR 26462), in an effort to determine more accurately the share of nonmedical professional fees

(included in the proposed 2014-based SNF market basket Professional Fees cost categories) that should be included in the labor-related share, we surveyed SNFs regarding the proportion of those fees that are attributable to local firms and the proportion that are purchased from national firms. Based on these weighted results, we determined that SNFs purchase, on average, the following portions of contracted professional services inside their local labor market:

- 78 percent of legal services.
- 86 percent of accounting and auditing services.
- 89 percent of architectural, engineering services.
- 87 percent of management consulting services.

Together, these four categories represent 3.3 percentage points of the total costs for the proposed 2014-based SNF market basket. We applied the percentages from this special survey to their respective SNF market basket weights to separate them into labor-related and nonlabor-related costs. As a result, we are designating 2.8 of the 3.3 total to the labor-related share, with the remaining 0.5 categorized as nonlabor-related.

For the proposed 2014-based SNF market basket, we conducted a similar analysis of home office data. The Medicare cost report CMS Form 2540-10 requires a SNF to report information regarding their home office provider. Approximately 57 percent of SNFs reported some type of home office information on their Medicare cost report for 2014 (for example, city, state, zip code). Using the data reported on the Medicare cost report, we compared the location of the SNF with the location of the SNF's home office. For the FY 2010-based SNF market basket, we used the Medicare HOMER database to determine the location of the provider's home office as this information was not available on the Medicare cost report CMS Form 2540-96. For the proposed 2014-based SNF market basket, we are proposing to determine the proportion of home office

contract labor costs that should be allocated to the labor-related share based on the percent of total SNF home office contract labor costs as reported in Worksheet S-3, Part II attributable to those SNFs that had home offices located in their respective local labor markets—defined as being in the same Metropolitan Statistical Area (MSA). We determined a SNF's and home office's MSAs using their zip code information from the Medicare cost reports.

Using this methodology, we determined that 28 percent of SNFs' home office contract labor costs were for home offices located in their respective local labor markets. Therefore, we are proposing to allocate 28 percent of home office expenses to the labor-related share. The FY 2010-based SNF market basket allocated 32 percent of home office expenses to the labor-related share.

In the proposed 2014-based SNF market basket, home office expenses that were subject to allocation based on the home office allocation methodology represent 0.7 percent of the proposed 2014-based SNF market basket. Based on the home office results, we are apportioning 0.2 percentage point of the 0.7 percentage point figure into the labor-related share ($0.7 \times 0.28 = 0.193$, or 0.2) and designating the remaining 0.5 percentage point as nonlabor-related. In sum, based on the two allocations mentioned above, we apportioned 3.0 percentage points into the labor-related share. This amount is added to the portion of professional fees that we continue to identify as labor-related using the I-O data such as contracted advertising and marketing costs (0.8 percentage point of total operating costs) resulting in a Professional Fees: Labor-Related cost weight of 3.8 percent.

Table 16 compares the proposed 2014-based labor-related share and the FY 2010-based labor-related share based on the relative importance of IGI's first quarter 2017 forecast with historical data through the fourth quarter of 2016.

TABLE 16—FY 2018 AND FY 2017 SNF LABOR-RELATED SHARE

	Relative importance, labor-related, FY 2018 (2014-based index) 2017:Q1 forecast	Relative importance, labor-related, FY 2017 (FY 2010-based index) 2016:Q2 forecast
Wages and Salaries ¹	50.3	48.8
Employee Benefits ¹	10.3	11.3
Professional fees: Labor-related	3.7	3.5
Administrative and Facilities Support Services	0.5	0.5
Installation, Maintenance and Repair Services ²	0.6	n/a
All Other: Labor-related Services	2.5	2.3

TABLE 16—FY 2018 AND FY 2017 SNF LABOR-RELATED SHARE—Continued

	Relative importance, labor-related, FY 2018 (2014-based index) 2017:Q1 forecast	Relative importance, labor-related, FY 2017 (FY 2010-based index) 2016:Q2 forecast
Capital-related (.391)	2.9	2.7
Total	70.8	69.1

¹ The Wages and Salaries and Employee Benefits cost weight reflect contract labor costs as described above.

² Previously classified in the All Other: Labor-related services cost category in the FY 2010-based SNF market basket.

The FY 2018 SNF labor-related share (LRS) is 1.7 percentage points higher than the FY 2017 SNF LRS, which is based on the FY 2010-based SNF market basket relative importance. This implies an increase in the quantity of the labor-related services because rebasing the index contributed significantly to the increase. Also contributing to the higher labor-related share is a higher capital-related cost weight in the proposed 2014-based SNF market basket compared to the FY 2010-based SNF market basket. As stated above, we include a proportion of capital-related expenses in the labor-related share as we believe a portion of these expenses (such as construction labor costs) are

deemed to be labor-intensive and vary with, or are influenced by, the local labor market.

5. Proposed Market Basket Estimate for the FY 2018 SNF PPS Update

As discussed previously in this proposed rule, beginning with the FY 2018 SNF PPS update, we are proposing to adopt the 2014-based SNF market basket as the appropriate market basket of goods and services for the SNF PPS. Based on IGI's first quarter 2017 forecast with historical data through the fourth quarter of 2016, the most recent estimate of the proposed 2014-based SNF market basket for FY 2018 is 2.7 percent. IGI is a nationally recognized economic and

financial forecasting firm that contracts with CMS to forecast the components of CMS' market baskets.

Table 17 compares the proposed 2014-based SNF market basket and the FY 2010-based SNF market basket percent changes. For the historical period between FY 2013 and FY 2016, the average difference between the two market baskets is -0.3 percentage point. This is primarily the result of the lower pharmaceuticals cost category weight, increased Fuel: Oil and Gas cost category weight, and the change in the Fuels price proxy. For the forecasted period between FY 2017 and FY 2019, there is no difference in the average growth rate.

TABLE 17—PROPOSED 2014-BASED SNF MARKET BASKET AND FY 2010-BASED SNF MARKET BASKET, PERCENT CHANGES: 2013–2019

Fiscal year (FY)	Proposed 2014-based SNF market basket	FY 2010-based SNF market basket
Historical data:		
FY 2013	1.6	1.8
FY 2014	1.6	1.7
FY 2015	1.8	2.3
FY 2016	1.9	2.3
Average FY 2013–2016	1.7	2.0
Forecast:		
FY 2017	2.9	2.9
FY 2018	2.7	2.7
FY 2019	2.7	2.7
Average FY 2017–2019	2.8	2.8

Source: IHS Global Insight, Inc. 1st quarter 2017 forecast with historical data through 4th quarter 2016.

While we ordinarily would propose to use this 2014-based SNF market basket percentage to update the SNF PPS per diem rates for FY 2018, we note that section 411(a) of the MACRA amended section 1888(e) of the Act to add section 1888(e)(5)(B)(iii) of the Act. Section 1888(e)(5)(B)(iii) of the Act establishes a special rule for FY 2018 that requires the market basket percentage, after the application of the productivity adjustment, to be 1.0 percent. In accordance with section 1888(e)(5)(B)(iii) of the Act, we will use a market basket percentage of 1.0

percent to update the federal rates set forth in this proposed rule. Effective for FY 2019, we are proposing to use the proposed 2014-based SNF market basket to determine the market basket percentage update for the SNF PPS per diem rates. As stated in section V.A.4. in this preamble, we are proposing to use the proposed 2014-based SNF market basket to determine the labor-related share effective for FY 2018.

B. Skilled Nursing Facility (SNF) Quality Reporting Program (QRP)

1. Background and Statutory Authority

Section 1888(e)(6)(A)(i) of the Act, as added by section 2(c)(4) of the Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act), requires that for fiscal years beginning with FY 2018, in the case of a SNF that does not submit data as applicable in accordance with sections 1888(e)(6)(B)(i)(II)–(III) of the Act for a fiscal year, the Secretary reduce the market basket percentage described in

section 1888(e)(5)(B)(i) of the Act for payment rates during that fiscal year by two percentage points. In section III.B of this proposed rule, we discuss proposed revisions in the market basket update regulations at § 413.337(d) that would implement this provision. In accordance with this statutory mandate, we have implemented a SNF Quality Reporting Program (QRP), which we believe promotes higher quality and more efficient health care for Medicare beneficiaries. The SNF QRP applies to freestanding SNFs, SNFs affiliated with acute care facilities, and all non-CAH swing-bed rural hospitals. We refer readers to the FY 2016 SNF PPS final rule (80 FR 46427 through 46429) for a full discussion of the statutory background and policy considerations that have shaped the SNF QRP.

Please note, the term “FY (year) SNF QRP” means the fiscal year for which the SNF QRP requirements applicable to that fiscal year must be met in order for a SNF to receive the full market basket percentage when calculating the payment rates applicable to it for that fiscal year.

The IMPACT Act (Pub. L. 113–185) amended Title XVIII of the Act, in part, by adding a new section 1899B, entitled “Standardized Post-Acute Care Assessment Data for Quality, Payment and Discharge Planning,” and by enacting new data reporting requirements for certain post-acute care (PAC) providers, including SNFs. Specifically, new sections 1899B(a)(1)(A)(ii) and (iii) of the Act require SNFs, inpatient rehabilitation facilities (IRFs), Long Term Care Hospitals (LTCHs) and home health agencies (HHAs), under each of their respective quality reporting program (which, for SNFs, is found at section 1888(e)(6) of the Act), to report data on quality measures specified under section 1899B(c)(1) of the Act for at least five domains, and data on resource use and other measures specified under section 1899B(d)(1) of the Act for at least three domains. Section 1899B(a)(1)(A)(i) of the Act further requires each of these PAC providers to report under their respective quality reporting program standardized patient assessment data in accordance with subsection (b) for at least the quality measures specified under subsection (c)(1) and that is for five specific categories: Functional status; cognitive function and mental status; special services, treatments, and interventions; medical conditions and co-morbidities; and impairments. All of the data that must be reported in accordance with section 1899B(a)(1)(A) of the Act must be standardized and interoperable so as

to allow for the exchange of the information among PAC providers and other providers and the use of such data in order to enable access to longitudinal information and to facilitate coordinated care. We refer readers to the FY 2016 SNF PPS final rule (80 FR 46427 through 46429) for additional information on the IMPACT Act and its applicability to SNFs.

2. General Considerations Used for Selection of Quality Measures for the SNF QRP

We refer readers to the FY 2016 SNF PPS final rule (80 FR 46429 through 46431) for a detailed discussion of the considerations we apply in measure selection for the LTCH QRP, such as alignment with the CMS Quality Strategy,² which incorporates the three broad aims of the National Quality Strategy.³

As part of our consideration for measures for use in the SNF QRP, we review and evaluate measures that have been implemented in other programs and take into account measures that have been endorsed by NQF for provider settings other than the SNF setting. We have previously adopted measures that we referred to as “applications” of those measures. We have received questions pertaining to the term “application” and want to clarify that when a proposed or implemented measure is referred to as an, “application of” the measure it means that the measure will be used in the SNF setting, rather than the setting for which it was endorsed by the NQF. For example, in the FY 2016 SNF PPS final rule (80 FR 46440 through 46444) we adopted an Application of Percent of Residents Experiencing One or More Falls With Major Injury (Long Stay) (NQF #0674) which is endorsed for the nursing home setting but not the SNF setting. For such measures, we would then intend to seek NQF endorsement for the SNF setting, and the NQF endorses one or more of them, we will update the title of the measure to remove the reference to “application”.

a. Measuring and Accounting for Social Risk Factors in the SNF QRP

We consider related factors that may affect measures in the SNF QRP. We understand that social risk factors such as income, education, race and ethnicity, employment, disability, community resources, and social

support (certain factors of which are also sometimes referred to as socioeconomic status (SES) factors or socio-demographic status (SDS) factors) play a major role in health. One of our core objectives is to improve beneficiary outcomes including reducing health disparities, and we want to ensure that all beneficiaries, including those with social risk factors, receive high quality care. In addition, we seek to ensure that the quality of care furnished by providers and suppliers is assessed as fairly as possible under our programs while ensuring that beneficiaries have adequate access to excellent care.

We have been reviewing reports prepared by HHS’ Office of the Assistant Secretary for Planning and Evaluation (ASPE) and the National Academies of Sciences, Engineering, and Medicine on the issue of measuring and accounting for social risk factors in CMS’ value-based purchasing and quality reporting programs, and considering options on how to address the issue in these programs. On December 21, 2016, ASPE submitted a Report to Congress on a study it was required to conduct under section 2(d) of the Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014. The study analyzed the effects of certain social risk factors of Medicare beneficiaries on quality measures and measures of resource use used in one or more of nine Medicare value-based purchasing programs.⁴ The report also included considerations for strategies to account for social risk factors in these programs. In a January 10, 2017 report released by The National Academies of Sciences, Engineering, and Medicine, that body provided various potential methods for measuring and accounting for social risk factors, including stratified public reporting.⁵

As discussed in the FY 2017 SNF PPS final rule, the NQF has undertaken a 2-year trial period in which new measures, measures undergoing maintenance review, and measures endorsed with the condition that they enter the trial period can be assessed to determine whether risk adjustment for selected social risk factors is appropriate for these measures. This trial entails temporarily allowing inclusion of social risk factors in the risk-adjustment

⁴ Office of the Assistant Secretary for Planning and Evaluation. 2016. Report to Congress: Social Risk Factors and Performance Under Medicare’s Value-Based Purchasing Programs. Available at <https://aspe.hhs.gov/pdf-report/report-congress-social-risk-factors-and-performance-under-medicare-value-based-purchasing-programs>.

⁵ National Academies of Sciences, Engineering, and Medicine. 2017. Accounting for social risk factors in Medicare payment. Washington, DC: The National Academies Press.

² <http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/CMS-Quality-Strategy.html>.

³ <http://www.aahr.gov/workingforquality/nqs/nqs2011annlrpt.htm>.

approach for these measures. At the conclusion of the trial, NQF will issue recommendations on the future inclusion of social risk factors in risk adjustment for quality measures.

As we continue to consider the analyses and recommendations from these reports and await the results of the NQF trial on risk adjustment for quality measures, we are continuing to work with stakeholders in this process. As we have previously communicated, we are concerned about holding providers to different standards for the outcomes of their patients with social risk factors because we do not want to mask potential disparities or minimize incentives to improve the outcomes for disadvantaged populations. Keeping this concern in mind, while we sought input on this topic previously, we continue to seek public comment on whether we should account for social risk factors in measures in the SNF QRP, and if so, what method or combination of methods would be most appropriate for accounting for social risk factors. Examples of methods include:

Confidential reporting to providers of measure rates stratified by social risk factors; public reporting of stratified measure rates; and potential risk adjustment of a particular measure as appropriate based on data and evidence.

In addition, we are also seeking public comment on which social risk factors might be most appropriate for reporting stratified measure scores and/or potential risk adjustment of a particular measure. Examples of social risk factors include, but are not limited to, dual eligibility/low-income subsidy, race and ethnicity, and geographic area of residence. We are seeking comments on which of these factors, including current data sources where this information would be available, could be used alone or in combination, and whether other data should be collected to better capture the effects of social risk. We will take commenters' input into consideration as we continue to assess the appropriateness and feasibility of accounting for social risk factors in the SNF QRP. We note that any such changes would be proposed through future notice and comment rulemaking.

We look forward to working with stakeholders as we consider the issue of accounting for social risk factors and reducing health disparities in CMS programs. Of note, implementing any of the above methods would be taken into consideration in the context of how this and other CMS programs operate (for example, data submission methods, availability of data, statistical considerations relating to reliability of

data calculations, among others), so we also welcome comment on operational considerations. CMS is committed to ensuring that its beneficiaries have access to and receive excellent care, and that the quality of care furnished by providers and suppliers is assessed fairly in CMS programs.

3. Proposed Collection of Standardized Resident Assessment Data Under the SNF QRP

a. Proposed Definition of Standardized Resident Assessment Data

Section 1888(e)(6)(B)(i)(III) of the Act requires that for fiscal year 2019 and each subsequent year, SNFs report standardized patient assessment data required under section 1899B(b)(1) of the Act. For purposes of meeting this requirement, section 1888(e)(6)(B)(ii) of the Act requires a SNF to submit the standardized resident assessment data required under section 1819(b)(3) of the Act using the standard instrument designated by the state under section 1819(e)(5) of the Act.

For purposes of the SNF QRP, we refer to beneficiaries who receive services from SNFs as "residents," and we collect certain information about the SNF services they receive using the Resident Assessment Instrument Minimum Data Set (MDS).

Section 1899B(b)(1)(B) of the Act describes standardized patient assessment data as data required for at least the quality measures described in sections 1899B(c)(1) of the Act and that is for the following categories:

- Functional status, such as mobility and self-care at admission to a PAC provider and before discharge from a PAC provider;
- Cognitive function, such as ability to express ideas and to understand and mental status, such as depression and dementia;
- Special services, treatments and interventions such as the need for ventilator use, dialysis, chemotherapy, central line placement and total parenteral nutrition;
- Medical conditions and comorbidities such as diabetes, congestive heart failure and pressure ulcers;
- Impairments, such as incontinence and an impaired ability to hear, see or swallow; and
- Other categories deemed necessary and appropriate.

As required under section 1899B(b)(1)(A) of the Act, the standardized patient assessment data must be reported at least for SNF admissions and discharges, but the Secretary may require the data to be reported more frequently.

In this rule, we are proposing to define the standardized patient assessment data that SNFs must report to comply with section 1888(e)(6) of the Act, as well as the requirements for the reporting of these data. The collection of standardized patient assessment data is critical to our efforts to drive improvement in health care quality across the four post-acute care (PAC) settings to which the IMPACT Act applies. We intend to use these data for a number of purposes, including facilitating their exchange and longitudinal use among health care providers to enable high quality care and outcomes through care coordination, as well as for quality measure calculation, and identifying comorbidities that might increase the medical complexity of a particular admission.

SNFs are currently required to report resident assessment data through the MDS by responding to an identical set of assessment questions using an identical set of response options (we refer to each solitary question/response option as a data element and we refer to a group of questions/response options on a single topic as a data element), both of which incorporate an identical set of definitions and standards. The primary purpose of the identical questions and response options is to ensure that we collect a set of standardized data elements across SNFs which we can then use for a number of purposes, including SNF payment and measure calculation for the SNF QRP.

LTCHs, IRFs, and HHAs are also required to report patient assessment data through their applicable PAC assessment instruments, and they do so by responding to identical assessment questions developed for their respective settings using an identical set of response options (which incorporate an identical set of definitions and standards). Like the MDS, the questions and response options for each of these other PAC assessment instruments are standardized across the PAC provider type to which the PAC assessment instrument applies. However, the assessment questions and response options in the four PAC assessment instruments are not currently standardized with each other. As a result, questions and response options that appear on the MDS cannot be readily compared with questions and response options that appear, for example, on the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF-PAI) the PAC assessment instrument used by IRFs. This is true even when the questions and response options are similar. This lack of

standardization across the four PAC provider types has limited our ability to compare one PAC provider type with another for purposes such as care coordination and quality improvement.

To achieve a level of standardization across SNFs, LTCHs, IRFs, and HHAs that enables us to make comparisons between them, we are proposing to define “standardized patient assessment data” as patient or resident assessment questions and response options that are identical in all four PAC assessment instruments, and to which identical standards and definitions apply. Standardizing the questions and response options across the four PAC assessment instruments will also enable the data to be interoperable allowing it to be shared electronically, or otherwise, between PAC provider types. It will enable the data to be comparable for various purposes, including the development of cross-setting quality measures and to inform payment models that take into account patient characteristics rather than setting, as described in the IMPACT Act.

We are inviting public comment on this proposed definition.

b. General Considerations Used for the Selection of Proposed Standardized Resident Assessment Data

As part of our effort to identify appropriate standardized patient assessment data for purposes of collecting under the SNF QRP, we sought input from the general public, stakeholder community, and subject matter experts on items that would enable person-centered, high quality health care, as well as access to longitudinal information to facilitate coordinated care and improved beneficiary outcomes.

To identify optimal data elements for standardization, our data element contractor organized teams of researchers for each category, and each team worked with a group of advisors made up of clinicians and academic researchers with expertise in PAC. Information-gathering activities were used to identify data elements, as well as key themes related to the categories described in section 1899B(b)(1)(B) of the Act. In January and February 2016, our data element contractor also conducted provider focus groups for each of the four PAC provider types, and a focus group for consumers that included current or former PAC patients and residents, caregivers, ombudsmen, and patient advocacy group representatives. The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data Focus Group Summary

Report is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Our data element contractor also assembled a 16-member TEP that met on April 7 and 8, 2016, and January 5 and 6, 2017, in Baltimore, Maryland, to provide expert input on data elements that are currently in each PAC assessment instrument, as well as data elements that could be standardized. The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data TEP Summary Reports are available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

As part of the environmental scan, data elements currently in the four existing PAC assessment instruments were examined to see if any could be considered for proposal as standardized patient assessment data. Specifically, this evaluation included consideration of data elements in OASIS-C2 (effective January 2017); IRF-PAI, v1.4 (effective October 2016); LCDS, v3.00 (effective April 2016); and MDS 3.0, v1.14 (effective October 2016). Data elements in the standardized assessment instrument that we tested in the Post-Acute Care Payment Reform Demonstration (PAC PRD)—the Continuity Assessment Record and Evaluation (CARE) were also considered. A literature search was also conducted to determine whether additional data elements to propose as standardized patient assessment data could be identified.

We additionally held four Special Open Door Forums (SODFs) on October 27, 2015; May 12, 2016; September 15, 2016; and December 8, 2016, to present data elements we were considering and to solicit input. At each SODF, some stakeholders provided immediate input, and all were invited to submit additional comments via the CMS IMPACT Mailbox at PACQualityInitiative@cms.hhs.gov.

We also convened a meeting with federal agency subject matter experts (SMEs) on May 13, 2016. In addition, a public comment period was open from August 12, to September 12, 2016, to solicit comments on detailed candidate data element descriptions, data collection methods, and coding methods. The IMPACT Act Public Comment Summary Report containing

the public comments (summarized and verbatim) and our responses, is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

We specifically sought to identify standardized patient assessment data that we could feasibly incorporate into the LTCH, IRF, SNF, and HHA assessment instruments and that have the following attributes: (1) Being supported by current science; (2) testing well in terms of their reliability and validity, consistent with findings from the Post-Acute Care Payment Reform Demonstration (PAC PRD); (3) the potential to be shared (for example, through interoperable means) among PAC and other provider types to facilitate efficient care coordination and improved beneficiary outcomes; (4) the potential to inform the development of quality, resource use and other measures, as well as future payment methodologies that could more directly take into account individual beneficiary health characteristics; and (5) the ability to be used by practitioners to inform their clinical decision and care planning activities. We also applied the same considerations that we apply with quality measures, including the CMS Quality Strategy which is framed using the three broad aims of the National Quality Strategy.

4. Policy for Retaining SNF QRP Measures and Proposal To Apply That Policy to Standardized Patient Assessment Data

In the FY 2016 SNF PPS final rule (80 FR 46431 through 46432), we finalized our policy for measure removal and also finalized that when we initially adopt a measure for the SNF QRP, this measure will be automatically retained in the SNF QRP for all subsequent payment determinations unless we propose to remove, suspend, or replace the measure. We propose to apply this policy to the standardized patient assessment data that we adopt for the SNF QRP.

We are inviting public comment on our proposal.

5. Policy for Adopting Changes to SNF QRP Measures and Proposal To Apply That Policy to Standardized Patient Assessment Data

In the FY 2016 SNF PPS final rule (80 FR 46432), we finalized our policy pertaining to the process for adoption of non-substantive and substantive changes to SNF QRP measures. We did not propose to make any changes to this

policy. We propose to apply this policy to the standardized patient assessment data that we adopt for the SNF QRP.

We are inviting public comment on our proposal.

6. Quality Measures Currently Adopted for the SNF QRP

The SNF QRP currently has seven adopted measures as outlined in Table 18.

TABLE 18—QUALITY MEASURES CURRENTLY ADOPTED FOR THE SNF QRP

Short name	Measure name & data source
Resident Assessment Instrument Minimum Data Set	
Pressure Ulcers	Percent of Residents or Patients with Pressure Ulcers that are New or Worsened (Short Stay) (NQF #0678)
Application of Falls	Application of the NQF-endorsed Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay) (NQF #0674)
Application of Functional Assessment/Care Plan	Application of Percent of LTCH Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631)
DRR	Drug Regimen Review Conducted with Follow-Up for Identified Issues—Post Acute Care (PAC) Skilled Nursing Facility Quality Reporting Program*
Claims-based	
MSPB	Total Estimated Medicare Spending Per Beneficiary (MSPB)—Post Acute Care (PAC) Skilled Facility (SNF) Quality Reporting Program (QRP)*
DTC	Discharge to Community—Post Acute Care (PAC) Skilled Nursing Facility (SNF) Quality Reporting Program (QRP)*
PPR	Potentially Preventable 30-Day Post-Discharge Readmission Measure for Skilled Nursing Facility Quality Reporting Program*

* Not currently NQF-endorsed for the SNF Setting.

7. SNF QRP Quality Measures Proposed Beginning With the FY 2020 SNF QRP

Beginning with the FY 2020 SNF QRP, in addition to the quality measures we are retaining under our policy described in section V.B.6. of this proposed rule, we are proposing to remove the current pressure ulcer measure entitled Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678) and to replace it with a modified version of the measure entitled Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury and to adopt four function outcome measures on resident functional status. We are also proposing to characterize the data elements described below as standardized patient assessment data under section 1899B(b)(1)(B) of the Act that must be reported by SNFs under the SNF QRP through the MDS

The proposed measures are as follows:

- Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury
- Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633).
- Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634).

- Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635).

- Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636).

The measures are described in more detail below.

a. Proposal To Replace the Current Pressure Ulcer Quality Measure, Percent of Residents or Patients With Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678), With a Modified Pressure Ulcer Measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury

(1) Measure Background

In this proposed rule, we are proposing to remove the current pressure ulcer measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678) from the SNF QRP measure set and to replace it with a modified version of that measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, beginning with the FY 2020 SNF QRP. The change in the measure name is to reduce confusion about the new modified measure. The modified version differs from the current version of the measure

because it includes new or worsened unstageable pressure ulcers, including deep tissue injuries (DTIs), in the measure numerator. The modified version of the measure would satisfy the IMPACT Act domain of skin integrity and changes in skin integrity.

We note that the technical specifications for the pressure ulcer measure were updated in August 2016 through a subregulatory process to ensure technical alignment of the SNF measure specifications with the LTCH, IRF, and HH specifications. The technical updates were added to ensure clarity in how the measure is calculated, and to avoid possible over counting of pressure ulcers in the numerator. In summary, we corrected the technical specifications to mitigate the risk of over counting new or worsened pressure ulcers and to reflect the actual unit of analysis as finalized in the rule, which is a stay (Medicare Part A stay) for SNF QRP, consistent with the IRF, and LTCH QRPs, rather than an episode (which could include multiple stays) as is used in the case of Nursing Home Compare. Thus, we updated the SNF measure specifications to reflect all resident stays, rather than the most-recent episode in a quarter, which is comprised of one or more stays in that measure calculation. Also to ensure alignment, we corrected our

specifications to ensure that healed wounds are not incorrectly captured in the measure. Further, we corrected the specifications to ensure the exclusion of residents who expire during their SNF stay. The SNF specifications can be reviewed on our Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

(2) Measure Importance

As described in the FY 2016 SNF PPS final rule (80 FR 46433), pressure ulcers are high-cost adverse events and are an important measure of quality. For information on the history and rationale for the relevance, importance, and applicability of having a pressure ulcer measure in the SNF QRP, we refer readers to the FY 2016 SNF PPS final rule (80 FR 46433 through 46434).

We are proposing to adopt a modified version of the current pressure ulcer measure because unstageable pressure ulcers, including DTIs, are similar to Stage 2, Stage 3, and Stage 4 pressure ulcers in that they represent poor outcomes, are a serious medical condition that can result in death and disability, are debilitating and painful, and are often an avoidable outcome of medical care.^{6 7 8 9 10 11} Studies show that most pressure ulcers can be avoided and can also be healed in acute, post-acute, and long-term care settings with appropriate medical care.¹² Furthermore, some studies indicate that DTIs, if managed using appropriate care, can be resolved without deteriorating into a worsened pressure ulcer.^{13 14}

⁶ Casey, G. (2013). "Pressure ulcers reflect quality of nursing care." *Nurs N Z* 19(10): 20–24.

⁷ Gorzoni, M.L. and S.L. Pires (2011). "Deaths in nursing homes." *Rev Assoc Med Bras* 57(3): 327–331.

⁸ Thomas, J.M., et al. (2013). "Systematic review: Health-related characteristics of elderly hospitalized adults and nursing home residents associated with short-term mortality." *J Am Geriatr Soc* 61(6): 902–911.

⁹ White-Chu, E.F., et al. (2011). "Pressure ulcers in long-term care." *Clin Geriatr Med* 27(2): 241–258.

¹⁰ Bates-Jensen B.M. Quality indicators for prevention and management of pressure ulcers in vulnerable elders. *Ann Int Med*. 2001;135 (8 Part 2), 744–51.

¹¹ Bennet, G., Dealy, C. Posnett, J. (2004). The cost of pressure ulcers in the UK, *Age and Aging*, 33(3):230–235.

¹² Black, Joyce M., et al. "Pressure ulcers: Avoidable or unavoidable? Results of the national pressure ulcer advisory panel consensus conference." *Ostomy-Wound Management* 57.2 (2011): 24.

¹³ Sullivan, R. (2013). A Two-year Retrospective Review of Suspected Deep Tissue Injury Evolution in Adult Acute Care Patients. *Ostomy Wound*

While DTIs are a subset of unstageable pressure ulcers, we collect DTI data elements separately and analyze them both separately and with other unstageable pressure ulcer item categories in our analysis below. We note that DTIs are categorized as a type of unstageable pressure ulcer on the MDS and other post-acute care item sets.

While there are few studies that provide information regarding the incidence of unstageable pressure ulcers in PAC settings, an analysis conducted by a contractor suggests the incidence of unstageable pressure ulcers varies according to the type of unstageable pressure ulcer and setting. This analysis examined the national incidence of new unstageable pressure ulcers in SNFs at discharge compared with admission using SNF discharges from January through December 2015. The contractor found a national incidence of 0.40 percent of new unstageable pressure ulcers due to slough and/or eschar, 0.02 percent of new unstageable pressure ulcers due to non-removable dressing/device, and 0.57 percent of new DTIs. In addition, an international study spanning the time period 2006 to 2009, provides some evidence to suggest that the proportion of pressure ulcers identified as DTI has increased over time. The study found DTIs increased by three fold, to nine percent of all observed ulcers in 2009, and that DTIs were more prevalent than either Stage 3 or 4 ulcers. During the same time period, the proportion of Stage 1 and 2 ulcers decreased, and the proportion of Stage 3 and 4 ulcers remained constant.¹⁵

The inclusion of unstageable pressure ulcers, including DTIs, in the numerator of this measure is expected to increase measure scores and variability in measure scores, thereby improving the ability to discriminate among poor- and high-performing SNFs. In the currently implemented pressure ulcer measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678), analysis using data from Quarter 4 2015

Management 59(9) <http://www.o-wm.com/article/two-year-retrospective-review-suspected-deep-tissue-injury-evolution-adult-acute-care-patient>

¹⁴ Posthauer, M.E., Zulkowski, K. (2005). Special to OWM: The NPUAP Dual Mission Conference: Reaching Consensus on Staging and Deep Tissue Injury. *Ostomy Wound Management* 51(4) <http://www.o-wm.com/content/the-npuap-dual-mission-conference-reaching-consensus-staging-and-deep-tissue-injury>

¹⁵ VanGilder, C., MacFarlane, G.D., Harrison, P., Lachenbruch, C., Meyer, S. (2010). The Demographics of Suspected Deep Tissue Injury in the United States: An Analysis of the International Pressure Ulcer Prevalence Survey 2006–2009. *Advances in Skin & Wound Care*. 23(6): 254–261.

through Quarter 3 2016 reveals that (the SNF mean score is 1.75 percent; the 25th and 75th percentiles are 0.0 percent and 2.53 percent, respectively; and 29.11 percent of facilities have perfect scores. In the proposed measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, during the same timeframe, the SNF mean score is 2.58 percent; the 25th and 75th percentiles are 0.65 percent and 3.70 percent, respectively; and 20.32 percent of facilities have perfect scores.

(3) Stakeholder Feedback

Our measure development contractor sought input from subject matter experts, including Technical Expert Panels (TEPs), over the course of several years on various skin integrity topics and specifically those associated with the inclusion of unstageable pressure ulcers, including DTIs. Most recently, on July 18, 2016, a TEP convened by our measure development contractor provided input on the technical specifications of this proposed quality measure, including the feasibility of implementing the proposed measure's updates related to the inclusion of unstageable ulcers, including DTIs, across PAC settings. The TEP supported the updates to the measure across PAC settings, including the inclusion in the numerator of unstageable pressure ulcers due to slough and/or eschar that are new or worsened, new unstageable pressure ulcers due to a non-removable dressing or device, and new DTIs. The TEP recommended supplying additional guidance to providers regarding each type of unstageable pressure ulcer. This support was in agreement with earlier TEP meetings, held on June 13, and November 15, 2013, which had recommended that CMS update the specifications for the pressure ulcer measure to include unstageable pressure ulcers in the numerator.^{16 17} Exploratory

¹⁶ Schwartz, M., Nguyen, K.H., Swinson Evans, T.M., Ignaczak, M.K., Thaker, S., and Bernard, S.L.: Development of a Cross-Setting Quality Measure for Pressure Ulcers: OY2 Information Gathering, Final Report. Centers for Medicare & Medicaid Services, November 2013. Available: <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/Downloads/Development-of-a-Cross-Setting-Quality-Measure-for-Pressure-Ulcers-Information-Gathering-Final-Report.pdf>.

¹⁷ Schwartz, M., Ignaczak, M.K., Swinson Evans, T.M., Thaker, S., and Smith, L.: The Development of a Cross-Setting Pressure Ulcer Quality Measure: Summary Report on November 15, 2013, Technical Expert Panel Follow-Up Webinar. Centers for Medicare & Medicaid Services, January 2014. Available: <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/Downloads/Development-of-a-Cross-Setting-Pressure-Ulcer-Quality-Measure-Summary-Report-on-November-15-2013-Technical-Expert-Pa.pdf>.

data analysis conducted by our measure development contractor suggests that the addition of unstageable pressure ulcers, including DTIs, will increase the observed incidence and variation in the rate of new or worsened pressure ulcers at the facility level, which may improve the ability of the proposed quality measure to discriminate between poor- and high-performing facilities.

We solicited stakeholder feedback on this proposed measure by means of a public comment period held from October 17 through November 17, 2016. In general, we received considerable support for the proposed measure. A few commenters supported all of the changes to the current pressure ulcer measure that resulted in the proposed measure, with one commenter noting the significance of the work to align the pressure ulcer quality measure specifications across the PAC settings.

Many commenters supported the inclusion of unstageable pressure ulcers due to slough/eschar, due to non-removable dressing/device, and DTIs in the proposed quality measure. Other commenters did not support the inclusion of DTIs in the proposed quality measure because they stated that there is no universally accepted definition for this type of skin injury.

The public comment summary report for the proposed measure is available on the CMS Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>. This summary includes further detail about our responses to various concerns and ideas stakeholders raised at that time.

The NQF-convened Measures Application Partnership (MAP) Post-Acute Care/Long-Term Care (PAC/LTC) Workgroup met on December 14 and 15, 2016, and provided input to us about this proposed measure. The workgroup provided a recommendation of “support for rulemaking” for use of the proposed measure in the SNF QRP. The MAP Coordinating Committee met on January 24 and 25, 2017, and provided a recommendation of “conditional support for rulemaking” for use of the proposed measure in the SNF QRP. The MAP’s conditions of support include that, as a part of measure implementation, CMS provide guidance on the correct collection and calculation of the measure result, as well as guidance on public reporting Web sites explaining the impact of the specification changes on the measure result. The MAP’s conditions also specify that CMS continue analyzing the

proposed measure in order to investigate unexpected results reported in public comment. We intend to fulfill these conditions by offering additional training opportunities and educational materials in advance of public reporting, and by continuing to monitor and analyze the proposed measure. More information about the MAP’s recommendations for this measure is available at <http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=84452>.

We reviewed the NQF’s consensus endorsed measures and were unable to identify any NQF-endorsed pressure ulcer quality measures for PAC settings that are inclusive of unstageable pressure ulcers. There are related measures, but after careful review, we determined these measures are not applicable for use in SNFs based on the populations addressed or other aspects of the specifications. We are unaware of any other such quality measures that have been endorsed or adopted by another consensus organization for the SNF setting. Therefore, based on the evidence discussed above, we are proposing to adopt the quality measure entitled, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, for the SNF QRP beginning with the FY 2020 SNF QRP. We plan to submit the proposed measure to the NQF for endorsement consideration as soon as feasible.

(4) Data Collection

The data for this quality measure would be collected using the MDS, which is currently submitted by SNFs through the Quality Improvement and Evaluation System (QIES) Assessment Submission and Processing (ASAP) System. The proposed standardized resident assessment data applicable to this measure that must be reported by SNFs for admissions, as well as discharges occurring on or after October 1, 2018 is described in section V.B.11.d. of this proposed rule. SNFs are already required to complete unstageable pressure ulcer data elements on the MDS. While the inclusion of unstageable wounds in the proposed measure results in a measure calculation methodology that is different from the methodology used to calculate the current pressure ulcer measure, the data elements needed to calculate the proposed measure are already included in the MDS. In addition, this proposed measure will further standardize the data elements used in risk adjustment of this measure. Our proposal to eliminate duplicative data elements will result in an overall reduced reporting burden for

SNFs for the proposed measure. To view the updated MDS, with the proposed changes, we refer to the reader to <https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/mds30rainmanual.html>. For more information on MDS submission using the QIES ASAP System, we refer readers to <http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/NHQIMDS30TechnicalInformation.html>.

For technical information about this proposed measure, including information about the measure calculation and the standardized patient assessment data elements used to calculate this measure, we refer readers to the document titled, *Proposed Measure Specifications for SNF QRP Measures in the FY 2018 SNF PPS proposed rule*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

We are proposing that SNFs begin reporting the proposed pressure ulcer measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, which will replace the current pressure ulcer measure, with data collection beginning October 1, 2018 for admissions as well as discharges.

We are inviting public comment on our proposal to replace the current pressure ulcer measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678), with a modified version of that measure, entitled Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, beginning with the FY 2020 SNF QRP.

b. Proposed Functional Outcome Measures

In this proposed rule, we propose to adopt for the SNF QRP four measures that we are specifying under section 1899B(c)(1) of the Act for purposes of meeting the functional status, cognitive function, and changes in function and cognitive function domain: (1) Application of the IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633); (2) Application of the IRF Function Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634); (3) Application of the IRF Function Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation

Patients (NQF #2635); and (4) Application of the IRF Function Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636). We finalized the same functional outcome measures for the IRF QRP in the FY 2016 IRF PPS final rule (80 FR 47111 through 47117). These measures are: (1) IRF Functional Outcome Measure: Change in Self-Care for Medical Rehabilitation Patients (NQF #2633); (2) IRF Functional outcome Measure: Change in Mobility Score for Medical Rehabilitation (NQF #2634); (3) IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635); and (4) IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636). We believe these measures satisfy section 1899B(c)(1)(A) of the Act because they address functional status, cognitive function, and changes in function and cognitive function domain. We intend to propose functional outcome measures for the home health and long-term care hospital settings in the future.

In developing these SNF functional outcome quality measures, we sought to build on our cross-setting function work by leveraging data elements currently collected in the MDS section GG, which would minimize additional data collection burden while increasing the feasibility of cross-setting item comparisons.

SNFs provide skilled services, such as skilled nursing or therapy services. Residents receiving care in SNFs include those whose illness, injury, or condition has resulted in a loss of function, and for whom rehabilitative care is expected to help regain that function. Treatment goals may include fostering residents' ability to manage their daily activities so that they can complete self-care and mobility activities as independently as possible, and, if feasible, return to a safe, active, and productive life in a community-based setting. Given that the primary goal of many SNF residents is improvement in function, SNF clinicians assess and document residents' functional status at admission and at discharge to evaluate not only the effectiveness of the rehabilitation care provided to individual residents but also the effectiveness of the SNF.

Examination of SNF data shows that SNF treatment practices directly influence resident outcomes. For example, therapy services provided to SNF residents have been found to be correlated with the functional improvement that SNF residents

achieve (that is, functional outcomes).¹⁸ Several studies found patients' functional outcomes vary based on treatment by physical and occupational therapists. Specifically, therapy was associated with significantly greater odds of improving mobility and self-care functional independence,¹⁹ shorter length of stay,²⁰ and a greater likelihood of discharge to community.²¹ Furthermore, Jung et al.²² found that an additional hour of therapy treatment per week was associated with approximately a 3.1 percentage-point increase in the likelihood of returning to the community among residents with a hip fracture. Achieving these targeted resident outcomes, including improved self-care and mobility functional independence, reduced length of stay, and increased discharges to the community, is a core goal of SNFs.

Among SNF residents receiving rehabilitation services, the amount of treatment received can vary. For example, the amount of therapy treatment provided varies by type (that is, for-profit versus not-for-profit) and location (that is, urban versus rural) of facility.^{23 24} Measuring residents' functional improvement across all SNFs on an ongoing basis would permit identification of SNF characteristics, such as ownership types or locations, associated with better or worse resident risk adjusted outcomes and thus help

SNFs optimally target quality improvement efforts.

MedPAC²⁵ noted that while there was an overall increase in the share of intensive therapy days between 2002 and 2012, the for-profit and urban facilities had higher shares of intensive therapy than not-for-profit facilities and those located in rural areas. Data from 2011 to 2014 indicate that this variation is not explained by patient characteristics, such as activities of daily living, comorbidities and age, as SNF residents with stays in 2011 were more independent on average than the average SNF resident with stays in 2014. Because more intense therapy is associated with more functional improvement for certain beneficiaries, this variation in rehabilitation services supports the need to monitor SNF residents' functional outcomes. Therefore, we believe there is an opportunity for improvement in this area.

In addition, a recent analysis that examined the incidence, prevalence, and costs of common rehabilitation conditions found that back pain, osteoarthritis, and rheumatoid arthritis are the most common and costly conditions affecting more than 100 million individuals and costing more than \$200 billion per year.²⁶ Persons with these medical conditions are admitted to SNFs for rehabilitation treatment.

The use of standardized mobility and self-care data elements would standardize the collection of functional status data, which could improve communication when residents are transferred between providers. Most SNF residents receive care in an acute care hospital prior to the SNF stay, and many SNF residents receive care from another provider after the SNF stay.

Recent research provides empirical support for the risk adjustment variables for these quality measures. In a study of resident functional improvement in SNFs, Wysocki et al.²⁷ found that several resident conditions were significantly related to resident

¹⁸ Jette, D.U., R.L. Warren, & C. Wirtalla. (2005). The relation between therapy intensity and outcomes of rehabilitation in skilled nursing facilities. *Archives of Physical Medicine and Rehabilitation*, 86 (3), 373–9.

¹⁹ Lenze, E.J., Host, H.H., Hildebrand, M.W., Morrow-Howell, N., Carpenter, B., Freedland, K.E., . . . & Binder, E.F. (2012). Enhanced medical rehabilitation increases therapy intensity and engagement and improves functional outcomes in post acute rehabilitation of older adults: A randomized-controlled trial. *Journal of the American Medical Directors Association*, 13(8), 708–712.

²⁰ Medicare Payment Advisory Commission (US). (2016). Report to the Congress: Medicare payment policy. Medicare Payment Advisory Commission.

²¹ Cary, M.P., Pan, W., Sloane, R., Bettger, J.P., Hoenig, H., Merwin, E.L., & Anderson, R.A. (2016). Self-Care and Mobility Following Postacute Rehabilitation for Older Adults With Hip Fracture: A Multilevel Analysis. *Archives of Physical Medicine and Rehabilitation*. <http://doi.org/10.1016/j.apmr.2016.01.012>.

²² Jung, H.Y., Trivedi, A.N., Grabowski, D.C., & Mor, V. (2016). Does More Therapy in Skilled Nursing Facilities Lead to Better Outcomes in Patients With Hip Fracture? *Physical therapy*, 96(1), 81–89.

²³ Grabowski, D.C., Feng, Z., Hirth, R., Rahman, M., & Mor, V. (2013). Effect of nursing home ownership on the quality of post-acute care: An instrumental variables approach. *Journal of Health Economics*, 32(1), 12–21.

²⁴ Medicare Payment Advisory Commission (US). (2016). Report to the Congress: Medicare payment policy. Medicare Payment Advisory Commission.

²⁵ Medicare Payment Advisory Commission (US). (2016). Report to the Congress: Medicare payment policy. Medicare Payment Advisory Commission.

²⁶ Ma V.Y., Chan L., Carruthers K.J. Incidence, Prevalence, Costs, and Impact on Disability of Common Conditions Requiring Rehabilitation in the United States: Stroke, Spinal Cord Injury, Traumatic Brain Injury, Multiple Sclerosis, Osteoarthritis, Rheumatoid Arthritis, Limb Loss, and Back Pain. *Archives of Phys Med and Rehab* 2014

²⁷ Wysocki, A., Thomas, K.S., & Mor, V. (2015). Functional Improvement Among Short-Stay Nursing Home Residents in the MDS 3.0. *Journal of the American Medical Directors Association*, 16(6), 470–474. <http://doi.org/10.1016/j.jamda.2014.11.018>.

functional improvement, including cognitive impairment, delirium, dementia, heart failure, and stroke. Also, Cary et al. found that several resident characteristics were significantly related to resident functional improvement, including age, cognitive function, self-care function at admission, and comorbidities.²⁸

These proposed outcome-based quality measures could inform SNF providers about opportunities to improve care in the area of function and strengthen incentives for quality improvement related to resident function.

We describe each of the four proposed functional outcome quality measures below. We note that the outcome-based quality measures we are proposing in this proposed rule assess self-care and mobility activities. We recognize that SNFs can focus on recovery across many areas of resident functioning related to body structure and function, activities, and participation; however, additional research is warranted to develop quality measures for other areas of functioning.

(a) Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633)

The proposed outcome quality measure, Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633), is an application of the outcome measure finalized in the IRF QRP entitled, IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633). The proposed quality measure estimates the mean risk-adjusted improvement in self-care score between admission and discharge among SNF residents. A summary of the NQF-endorsed quality measure specifications can be accessed on the NQF Web site: <http://www.qualityforum.org/qps/2633>. Detailed specifications for the NQF-endorsed quality measure can be accessed at <http://www.qualityforum.org/ProjectTemplateDownload.aspx?SubmissionID=2633>.

The proposed functional outcome measure, the Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633),

requires the collection of admission and discharge functional status data by trained clinicians using standardized patient data elements that assess specific functional self-care activities such as shower/bathe self, dressing upper body and dressing lower body. These self-care items are daily activities that clinicians typically assess at the time of admission and/or discharge to determine residents' needs, evaluate resident progress, and/or prepare residents and families for a transition to home or to another provider. The standardized self-care function data elements are coded using a 6-level rating scale that indicates the resident's level of independence with the activity; higher scores indicate more independence. The proposed outcome quality measure also requires the collection of risk factor data, such as resident functioning prior to the current reason for admission, bladder continence, communication ability and cognitive function, at the time of admission.

The data elements included in the proposed quality measure were originally developed and tested as part of the PAC PRD version of the Continuity Assessment Record and Evaluation (CARE) Item Set,²⁹ which was designed to standardize assessment of patients' and residents' status across acute and post-acute providers, including IRFs, SNFs, HHAs and LTCHs. The development of the CARE Item Set and a description and rationale for each item is described in a report entitled "The Development and Testing of the Continuity Assessment Record and Evaluation (CARE) Item Set: Final Report on the Development of the CARE Item Set: Volume 1 of 3."³⁰ Reliability and validity testing were conducted as part of CMS' Post-Acute Care Payment Reform Demonstration, and we concluded that the functional status items have acceptable reliability and validity. A description of the testing methodology and results are available in several reports, including the report entitled "The Development and Testing of the Continuity Assessment Record And Evaluation (CARE) Item Set: Final Report On Reliability Testing: Volume 2 of 3"³¹ and the report entitled "The Development and Testing of The

Continuity Assessment Record And Evaluation (CARE) Item Set: Final Report on Care Item Set and Current Assessment Comparisons: Volume 3 of 3."³² The reports are available on CMS' Post-Acute Care Quality Initiatives Web page at <http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/CARE-Item-Set-and-B-CARE.html>.

(i) Stakeholder Input

A cross-setting function TEP convened by our measure development contractor on September 9, 2013 provided input on the initial technical specifications of this proposed quality measure, Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633). The TEP was supportive of the implementation of this measure and supported CMS's efforts to standardize patient/resident assessment data elements. The TEP summary report is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

The MAP met on December 14 and 15, 2015, and provided input on the proposed measure, Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633) for use in the SNF QRP. The MAP recognized that this proposed quality outcome measure is an adaptation of a currently endorsed measure for the IRF population, and encouraged continued development to ensure alignment of this measure across PAC settings. The MAP noted there should be some caution in the interpretation of measure results due to resident differentiation between facilities. The MAP also noted possible duplication as the MDS already includes function data elements. We note that the data elements for the proposed measure are similar, but not the same as the existing MDS Section G function data elements. The data elements for the proposed measure include those that are the proposed standardized patient assessment data for functional status under section 1899B(b)(1)(B)(i) of the Act. The MAP also stressed the importance of considering burden on providers when measures are considered for implementation. The MAP's overall recommendation was for "encourage further development." More information about the MAP's recommendations for

²⁸ Cary, M.P., Pan, W., Sloane, R., Bettger, J.P., Hoenig, H., Merwin, E.I., & Anderson, R.A. (2016). Self-Care and Mobility Following Postacute Rehabilitation for Older Adults With Hip Fracture: A Multilevel Analysis. *Archives of Physical Medicine and Rehabilitation*. <http://doi.org/10.1016/j.apmr.2016.01.012>.

²⁹ Barbara Gage et al., "The Development and Testing of the Continuity Assessment Record and Evaluation (CARE) Item Set: Final Report on the Development of the CARE Item Set" (RTI International, 2012).

³⁰ Barbara Gage et al., "The Development and Testing of the Continuity Assessment Record and Evaluation (CARE) Item Set: Final Report on the Development of the CARE Item Set" (RTI International, 2012).

³¹ Ibid.

³² Ibid.

this proposed measure is available at <http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdIdentifier=id&ItemID=81593>.

Since the MAP's review and recommendation for further development, we have continued to develop this measure by soliciting input via a TEP, providing a public comment opportunity, and providing an update on measure development to the MAP via the feedback loop. More specifically, our measure development contractor convened a SNF-specific function TEP on May 5, 2016, to provide further input on the technical specifications of this proposed quality measure by reviewing the IRF specifications and the specifications of competing and related function quality measures. Overall, the TEP was supportive of the measure and supported our efforts to standardize patient assessment data elements. The SNF-specific function TEP summary report is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

We also solicited stakeholder feedback on the development of this measure by means of a public comment period that was open from October 7, 2016, until November 4, 2016. There was general support of the measure concept and the importance of functional improvement. Comments on the measure varied, with some commenters supportive of the measure, while others were either not in favor of the measure, or in favor of suggested potential modifications to the measure specifications. The public comment summary report for the proposed measure is available on the CMS Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Further, we engaged with stakeholders when we presented an update on the development of this quality measure to the MAP on October 19, 2016, during a MAP feedback loop meeting. Slides from that meeting are available at <http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdIdentifier=id&ItemID=83640>.

(ii) Competing and Related Measures and Measure Justification

During the development of this proposed functional outcome measure, we have monitored and reviewed NQF-

endorsed measures that are competing and/or related to the proposed quality measures. We identified six competing and related quality measures focused on self-care functional improvement for residents in the SNF setting entitled: (1) CARE: Improvement in Self Care (NQF #2613); (2) Functional Change: Change in Self-Care Score for Skilled Nursing Facilities (NQF #2769); (3) Functional Status Change for Patients with Shoulder Impairments (NQF #0426); (4) Functional Status Change for Patients with Elbow, Wrist and Hand Impairments (NQF #0427); (5) Functional Status Change for Patients with General Orthopedic Impairments (NQF #0428); and (6) Change in Daily Activity Function as Measures by the AM-PAC (NQF #0430). We reviewed the technical specifications for these six quality measures and compared these specifications to those of our proposed outcome-based quality measure, the Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633), and have noted the following differences in the technical specifications: (1) The number of risk adjusters and variance explained by these risk adjusters in the regression models; (2) the use of functional assessment items that were developed and tested for cross-setting use; (3) the use of items that are already on the MDS 3.0 and what this means for burden; (4) the handling of missing functional status data; and (5) the use of exclusion criteria that are baseline clinical conditions. We describe these key specifications of the proposed outcome measure, Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633), in detail below.

Our literature review, input from technical expert panels, public comment feedback, and data analyses demonstrated the importance of adequate risk adjustment of admission case mix factors for functional outcome measures. Inadequate risk adjustment of admission case mix factors may lead to erroneous conclusions about the quality of care delivered within the facility, and thus is a potential threat to the validity of a quality measure that examines outcomes of care, such as functional outcomes. The proposed quality measure, the Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633) risk adjusts for more than 60 risk factors, explaining approximately 25 percent of the variance in change in function, and includes all of the following risk factors:

Prior functioning, prior device use, age, functional status at admission, primary diagnosis, and comorbidities. These risk factors are key predictors of functional performance and should be accounted for in any facility-level comparison of functional outcomes.

Another key feature of the proposed measure, the Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633), is that it uses the functional assessment data elements and the associated rating scale that were developed and tested for cross-setting use. The measure uses functional assessment items from the CARE Item Set, which were developed and tested as part of the PAC-PRD between 2006 and 2010. The items were designed to build on the existing science for functional assessment instruments, and included a review of the strengths and limitations of existing functional assessment instruments. An important strength of the standardized function items from the CARE instrument is that they allow comparison and tracking of patients' and residents' functional outcomes as they move across post-acute settings. Specifically, the CARE Item Set was designed to standardize assessment of patients' status across acute and post-acute settings, including SNFs, IRFs, LTCHs, and HHAs. The risk-adjustors for various setting-specific versions of this measure differ by the inclusion of adjustors such as comorbidities in the IRF measure. However, we believe that the differences in risk adjustment will not hinder future comparability across settings. Agencies such as MedPAC have supported a coordinated approach to measurement across settings using standardized patient data elements.

A third important consideration is that some of the data elements associated with the proposed measure are already included on the MDS in Section GG, because we adopted a cross-setting function process measure in the SNF QRP FY 2016 Final Rule (FR 80 46444 through 46453). Three of the self-care data elements necessary to calculate that quality measure, an Application of the Percent of Long-Term Care Hospital Patient with a Functional Assessment and a Care Plan that Addresses Function (NQF #2631) are used to calculate the proposed quality measure. Provider burden of reporting on multiple items was a key consideration discussed by stakeholders in our recent TEP is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/>

IMPACT-Act-Downloads-and-Videos.html.

We believe it is important to include the records of residents with missing functional assessment data when calculating a facility-level functional outcome quality measure for SNFs. The proposed measure, the Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633), incorporates a method to address missing functional assessment data.

We believe certain clinically-defined exclusion criteria are important to specify in a functional outcome quality measure in order to maintain the validity of the quality measure. Exclusions for the proposed quality measure, Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633), were selected through a review of the literature, input from Technical Expert Panels, and input from the public comment process. The quality measure, Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633) is intended to capture improvement in self-care function from admission to discharge for residents who are admitted with an expectation of functional improvement. Therefore, we exclude residents with certain conditions, for example progressive neurologic conditions, because these residents are typically not expected to improve on self-care skills for activities such as lower body dressing. Furthermore, we exclude residents who are independent on all self-care items at the time of admission, because no improvement in self-care can be measured with the selected set of items by discharge. Including residents with limited expectation for improvement could introduce incentives for SNF providers to restrict access to these residents.

We would like to note that our measure developer presented and discussed these technical specification differentiations with TEP members during the May 6, 2016 TEP meeting in order to obtain TEP input on preferred specifications for valid functional outcome quality measures. The differences in measure specifications and the TEP feedback are presented in the TEP Summary Report, which is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>. Overall, the TEP supported the use of a risk adjustment model that

addressed all of the following risk factors: Prior functioning, admission functioning, prior diagnosis and comorbidities. In addition, they supported exclusion criteria that would address functional improvement expectations of residents.

Therefore, based on the evidence provided above, we are proposing to adopt the quality measure entitled, Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633), beginning with the FY 2020 SNF QRP.

(iii) Proposed Data Collection Mechanism

Data for the proposed quality measure, the Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633), would be collected using the MDS, with the submission through the QIES ASAP system. For more information on SNF QRP reporting through the QIES ASAP system, refer to CMS Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

The calculation of the proposed quality measure would be based on the data collection of standardized items to be included in the MDS. The function items used to calculate this measure are the same set of functional status data items that have been added to the IRF-PAI version 1.4, for the purpose of providing standardized data elements under the domain of functional status, which is required by the IMPACT Act.

If finalized for implementation into the SNF QRP, the MDS would be modified so as to enable us to calculate this proposed quality measure using additional data elements that are standardized with the IRF-PAI and such data would be obtained at the time of admission and discharge for all SNF residents covered under a Part A stay. The standardized items used to calculate this proposed quality measure do not duplicate existing Section G items currently used for data collection within the MDS. The quality measure and standardized data element specifications for the Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633) can be found on the SNF QRP Measures and Technical Information Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment->

Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.

We invite public comments on our proposal to adopt the quality measure entitled, the Application of IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633) for the SNF QRP, beginning with the FY 2020 SNF QRP, with data collection for residents admitted and discharged starting on October 1, 2018.

(b) Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634)

This quality measure is an application of the outcome measure finalized in the IRF QRP entitled, IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634). This proposed quality measure estimates the risk-adjusted mean improvement in mobility score between admission and discharge among SNF residents. A summary of this quality measure can be accessed on the NQF Web site: <http://www.qualityforum.org/qps/2634>. Detailed specifications for this quality measure can be accessed at <http://www.qualityforum.org/ProjectTemplateDownload.aspx?SubmissionID=2634>.

As previously noted, residents seeking care in SNFs include those whose illness, injury, or condition has resulted in a loss of function, and for whom rehabilitative care is expected to help regain that function. Several studies found patients' functional outcomes vary based on treatment. Physical and occupational therapy treatment was associated with greater functional gains, shorter stays, and a greater likelihood of a discharge to a community. Among SNF residents receiving rehabilitation services, the amount of therapy prescribed can vary widely, and this variation is not always associated with resident characteristics. This variation in rehabilitation services supports the need to monitor SNF resident's functional outcomes, as we believe there is an opportunity for improvement in this area.

The proposed functional outcome measure, the Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634), requires the collection of admission and discharge functional status data by trained clinicians using standardized data elements that assess specific functional mobility activities such as

toilet transfer and walking. These mobility items are daily activities that clinicians typically assess at the time of admission and/or discharge to determine resident's needs, evaluate resident progress, and prepare residents and families for a transition to home or to another care provider. The standardized mobility function items are coded using a 6-level rating scale that indicates the resident's level of independence with the activity; higher scores indicate more independence.

The functional assessment items included in the proposed outcome quality measures were originally developed and tested as part of the Post-Acute Care Payment Reform Demonstration version of the CARE Item Set, which was designed to standardize assessment of patients' status across acute and post-acute providers, including SNFs, HHAs, IRFs, and LTCHs.

This proposed outcome quality measure also requires the collection of risk factors data, such as resident functioning prior to the current reason for admission, history of falls, bladder continence, communication ability and cognitive function, at the time of admission.

A cross-setting function TEP convened by our measure development contractor on September 9, 2013, provided input on the initial technical specifications of this proposed quality measure, the Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634). The TEP was supportive of the implementation of this measure and supported our efforts to standardize patient/resident assessment data elements. The TEP summary report is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

The list of measures under consideration for the SNF QRP, including this quality measure, was released to the public on November 27, 2015, and early comments were submitted between December 1 and December 7, 2015. The MAP met on December 14 and 15, 2015, sought public comment on this measure from December 23, 2015, to January 13, 2015, and met on January 26 and 27, 2016. The NQF provided the MAP's input to us as required under section 1890A(a)(3) of the Act in the final report, MAP 2016 Considerations for Selection of Measures for Federal Programs: Post-Acute/Long-Term Care, which is

available at http://www.qualityforum.org/Setting_Priorities/Partnership/MAP_Final_Reports.aspx. The MAP recognized that this measure is an adaptation of currently endorsed measures for the IRF population, and encouraged continued development to ensure alignment across PAC settings. They also noted there should be some caution in the interpretation of measure results due to patient/resident differentiation between facilities. With regard to alignment across PAC settings, the self-care items included in the proposed quality measure are the same self-care items that are included in the IRF-PAI Version 1.4. We agree with the MAP that patient/resident populations can vary across IRFs and SNFs, and we have taken this issue into consideration while selecting and testing the risk adjustors, which include medical conditions, admission function, prior functioning and comorbidities. The risk-adjustors for the IRF and the SNF versions of this measure differ by the inclusion of adjustors such as comorbidities in the IRF measure. As noted, though there are differences between the measures we believe that the differences in risk adjustment will not hinder future comparability across measures. The MAP also noted possible duplication as the MDS already includes function data elements. The data elements for the proposed measure are similar, but not the same as the existing MDS Section G function data elements. The data elements for the proposed measures include those that are the proposed standardized data elements for function. The MAP also stressed the importance of considering burden on providers when measures are considered for implementation. We appreciate the issue of burden and have taken that into consideration in developing the measure. Please refer to the FY 2016 SNF PPS final rule (80 FR 46428) for more information on the MAP.

The MAP's overall recommendation was for "encourage further development." More information about the MAP's recommendations for this proposed measure is available at <http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=r=id&ItemID=81593>.

Since the MAP's review and recommendation for further development, we have continued to develop this measure including soliciting input from a TEP, providing a public comment opportunity, and providing an update on measure development to the MAP via the feedback loop. More specifically, our measure development contractor

convened a SNF-specific TEP on May 5, 2016 to provide further input on the technical specifications of this proposed quality measure by reviewing the IRF specifications and the specifications of competing and related function quality measures. Overall, the TEP was supportive of the measure and supported our efforts to standardize patient/resident assessment data elements. The SNF-specific function TEP summary report is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

We also solicited stakeholder feedback on the development of this measure by means of a public comment period open from October 7, until November 4, 2016. There was general support of the measure concept and the importance of functional improvement. Comments on the measure varied, with some commenters supportive of the measure, while others were either not in favor of the measure, or in favor of suggested potential modifications to the measure specifications. The public comment summary report for the proposed measure is available on the CMS Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

We also engaged with the NQF convened MAP when we presented an update on the development of this quality measure on October 19, 2016, during a MAP feedback loop meeting. Slides from that meeting are available at <http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=83640>.

During the development of this measure, we have monitored and reviewed NQF-endorsed measures that are competing and related. We identified seven competing and related quality measures focused on improvement in mobility for residents in the SNF setting entitled: (1) CARE: Improvement in Mobility (NQF #2612); (2) Functional Change: Change in Mobility Score (NQF 2774); (3) Functional Status Change for Patients with Knee Impairments (NQF #0422); (4) Functional Status Change for Patients with Hip Impairments (NQF #0423); (5) Functional Status Change for Patients with Foot and Ankle Impairments (NQF #0424); (6) Functional Status Change for Patients with Lumbar Impairments (NQF #0425); and (7) Change in Basic Mobility as

Measures by the AM-PAC (NQF #0429). We reviewed the technical specifications for these seven measures carefully and compared them with the specifications of the proposed quality measure, the Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634) and have noted the following differences in the technical specifications: (1) The number of risk adjusters and variance explained by these risk adjusters in the regression models; (2) the use of functional assessment items that were developed and tested for cross-setting use; (3) the use of items that are already on the MDS 3.0 and what this means for burden; (4) the handling of missing functional status data; and (5) the use of exclusion criteria that are baseline clinical conditions. We describe these key specifications of the proposed outcome measure, the Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634), below in more detail.

Our literature review, input from technical expert panels, public comment feedback, and analyses demonstrated the importance of adequate risk adjustment of admission case mix factors for functional outcome measures. Inadequate risk adjustment of admission case mix factors may lead to erroneous conclusions about the quality of care delivered within the facility, and thus is a potential threat to the validity of a quality measure that examines outcomes of care, such as functional status. The proposed quality measure, the Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634) risk adjusts for more than 60 risk factors, explaining approximately 23 percent of the variance in change in function, and includes all of the following risk adjusters: Prior functioning, prior device use, age, functional status at admission, primary diagnosis and comorbidities. These are key predictors of functional performance and need to be accounted for in any facility-level functional outcome quality measure.

Another key feature of the proposed measure, Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634), is that it uses the functional assessment data elements and the associated rating scale that were developed and tested for cross-setting use. The measure uses functional assessment items from the CARE Item Set, which were developed and tested as part of the PAC PRD between 2006 and

2010. The items were designed to build on the existing science for functional assessment instruments, and included a review of the strengths and limitations of existing functional assessment instruments. An important strength of the cross-setting function items from the CARE instrument is that they allow tracking of patients' and residents' functional outcomes as they move across post-acute settings. Specifically, the CARE Item Set was designed to standardize assessment of patients' and residents' status across acute and post-acute settings, including SNFs, IRFs, LTCHs, and HHAs. The MedPAC has publicly supported a coordinated approach to measurement across settings using standardized data elements.

A third important consideration is that some of the data elements associated with the proposed measure, Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634) are already included on the MDS in Section GG, because we adopted a cross-setting function process measure in the SNF QRP FY 2016 Final Rule (FR 80 46444 through 46453), and seven of the mobility data elements necessary to calculate that quality measure, an Application of the Percent of Long-Term Care Hospital Patient with a Functional Assessment and a Care Plan that Addresses Function (NQF #2631) are used to calculate the proposed quality measure. Provider burden of reporting on multiple measures was a key consideration discussed by stakeholders in our recent TEP: <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

We believe it is important to include the records of residents with missing functional assessment data in the calculating a facility-level functional outcome quality measure for SNFs. The proposed measure, Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634), incorporates a method to address missing functional assessment data.

We believe certain clinically-defined exclusion criteria are important to specify in a functional outcome quality measure in order to maintain the validity of the quality measure. Exclusions for the proposed quality measure, Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634), were selected through a literature review, input from TEPs, and input from the public comment process.

The Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634) is intended to capture improvement in mobility from admission to discharge for residents who are admitted with an expectation of functional improvement. Therefore, we exclude patients with certain conditions, for example progressive neurologic conditions, because these residents are typically not expected to improve on mobility skills for activities such as walking. Furthermore, we exclude residents who are independent on all mobility items at the time of admission, because no improvement can be measured with the selected set of items by discharge. Inclusion of residents with limited expectation for improvement could introduce incentives for SNF providers to limited access to these residents.

Our measure developer contractor presented and discussed these technical specification differentiations during the May 6, 2016 TEP meeting in order to obtain TEP input on preferred specifications for valid functional outcome quality measures. The differences in measure specifications and the TEP feedback are presented in the TEP Summary Report, which is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, based on the evidence provided above, we are proposing to adopt the quality measure entitled, Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634), for use beginning with the FY 2020 SNF QRP.

Data for the proposed quality measure, the Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634), would be collected using the MDS, with the submission through the QIES ASAP system. For more information on SNF QRP reporting through the QIES ASAP system, refer to <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

The calculation of the proposed quality measure would be based on the data collection of standardized items to be included in the MDS. The function items used to calculate this measure are

the same set of functional status data items that have been added to the IRF-PAI version 1.4, for the purpose of providing standardized data elements under the domain of functional status. If this proposed quality measure is finalized for implementation in the SNF QRP, the MDS would be modified so as to enable the calculation of these standardized items that are used to calculate this proposed quality measure. The collection of data by means of the standardized items would be obtained at admission and discharge. The standardized items used to calculate this proposed quality measure do not duplicate existing items currently used for data collection within the MDS. The quality measure and standardized data element specifications for the Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634) is available on the SNF QRP Measures and Technical Information Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

We invite public comments on our proposal to adopt the quality measure, entitled Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634) beginning with the FY 2020 SNF QRP.

(c) Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635)

This quality measure is an application of the outcome quality measure finalized in the IRF QRP entitled, IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635). The proposed quality measure estimates the percentage of SNF residents who meet or exceed an expected discharge self-care score. A summary of this quality measure can be accessed on the NQF Web site at <http://www.qualityforum.org/qps/2635>. Detailed specifications for the quality measure can be accessed at <http://www.qualityforum.org/ProjectTemplateDownload.aspx?SubmissionID=2635>.

As previously noted, residents seeking care in SNFs include individuals whose illness, injury, or condition has resulted in a loss of function, and for whom rehabilitative care is expected to help regain that function. Several studies found patients' functional outcomes vary based on

treatment by physical and occupational therapists. Therapy was associated with greater functional gains, shorter stays, and a greater likelihood of discharge to community. Among SNF residents receiving rehabilitation services, the amount of treatment prescribed can vary widely, and this variation is not associated with resident characteristics. This variation in rehabilitation services supports the need to monitor SNF resident's functional outcomes, as we believe there is an opportunity for improvement in this area.

The proposed outcome quality measure, Application of IRF Functional Outcome Measure: Discharge Self-Care Score or Medical Rehabilitation Patients (NQF #2635), requires the collection of functional status data at admission and discharge by trained clinicians using standardized patient assessment data elements such as eating, oral hygiene, and lower body dressing. These self-care items are daily activities that clinicians typically assess at the time of admission and discharge to determine residents' needs, evaluate resident progress, and prepare residents and families for a transition to home or to another provider. The self-care function data elements are coded using a 6-level rating scale that indicates the resident's level of independence with the activity; higher scores indicate more independence.

The functional assessment items included in the proposed outcome quality measures were originally developed and tested as part of the Post-Acute Care Payment Reform Demonstration version of the CARE Item Set, which was designed to standardize assessment of patients' status across acute and post-acute providers, including SNFs, HHAs, IRFs, and LTCHs

This proposed outcome quality measure also requires the collection of risk factors data, such as resident functioning prior to the current reason for admission, bladder continence, communication ability, and cognitive function at the time of admission.

A cross-setting function TEP convened by our measure development contractor on September 9, 2013 provided input on the initial technical specifications of this proposed quality measure, the Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635). The TEP was supportive of the implementation of this measure and supported CMS's efforts to standardize patient/resident assessment data elements. The TEP summary report is available at <https://www.cms.gov/>

Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.

The MAP met on December 14 and 15, 2015, and provided input on the proposed measure, Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635) for use in the SNF QRP. The MAP recognized that this proposed quality measure is an adaptation of a currently endorsed measure for the IRF population, and encouraged continued development to ensure alignment of this measure across PAC settings. The MAP also noted there should be some caution in the interpretation of measure results due to patient/resident differentiation between facilities. The MAP also stressed the importance of considering burden on providers when measures are considered for implementation. The MAP also noted possible duplication as the MDS already includes function data elements. The data elements for the proposed measure are similar, but not the same as the existing MDS function data elements. The data elements for the proposed measures include those that are the proposed standardized patient data elements for function. The MAP's overall recommendation was to "encourage further development." More information about the MAP's recommendations for this proposed measure is available at <http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=81593>.

Since the 2015 MAP's review and recommendation for further development, we have continued to develop this measure including soliciting input via a TEP, providing a public comment opportunity and providing an update on measure development to the MAP via the feedback loop. More specifically, our measure development contractor convened a SNF-specific TEP on May 5, 2016 to provide further input on the technical specifications of this proposed quality measure by reviewing the IRF specifications and the specifications of competing and related function quality measures. Overall, the TEP was supportive of the measure. Specifically, they supported the risk adjusters, suggested some additional risk adjusters, supported the exclusion criteria and supported CMS's efforts to standardize patient/resident assessment data elements. The SNF-specific function TEP summary report is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.

We also solicited stakeholder feedback on the development of this measure by means of a public comment period open from October 7, 2016 until November 4, 2016. There was general support of the measure concept and the importance of functional improvement. Comments on the measure varied, with some commenters supportive of the measure, while others were either not in favor of the measure, or in favor of suggested potential modifications to the measure specifications. Some comments focused on suggestions for additional risk adjusters, and the data elements. The public comment summary report for the proposed measure is available on the CMS Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

We also engaged with stakeholders when we presented an update on the development of this quality measure to the MAP on October 19, 2016, during a MAP feedback loop meeting. Slides from that meeting are available at <http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=83640>.

During the development of this measure, we have monitored and reviewed NQF-endorsed measures that are competing and related. We identified six competing and related quality measures focused on self-care functional improvement for residents in the SNF setting entitled: (1) CARE: Improvement in Self Care (NQF #2613); (2) Functional Change: Change in Self-Care Score (NQF #2286); (3) Functional Status Change for Patients with Shoulder Impairments (NQF #0426); (4) Functional Status Change for Patients with Elbow, Wrist and Hand Impairments (NQF #0427); (5) Functional Status Change for Patients with General Orthopedic Impairments (NQF #0428); and (6) Change in Daily Activity Function as Measures by the AM-PAC (NQF #0430).

As described above, we reviewed the technical specifications for these six measures and compared them with the specifications for the proposed the quality measure, Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635) and, as described in detail above, we noted the following differences in the technical specifications: (1) The number

of risk adjusters and variance explained by these risk adjusters in the regression models; (2) the use of functional assessment items that were developed and tested for cross-setting use; (3) the use of items that are already on the MDS 3.0 and what this means for burden; (4) the handling of missing functional status data; and (5) the use of exclusion criteria that are baseline clinical conditions.

Consistent with the other functional outcome measures, the specifications for this proposed quality measure, Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635), were developed based on our literature review, input from technical expert panels, public comment feedback and data analyses. The details about the specifications for the measures described above also apply to this proposed quality measure. Overall, the TEP supported the use of a risk adjustment model that addressed prior functioning, admission functioning, prior diagnosis and comorbidities. In addition, they supported exclusion criteria that would address functional improvement expectations of residents.

Our measure developer contractor presented and discussed these technical specification differentiations during the May 6, 2016 TEP meeting in order to obtain TEP input on preferred specifications for valid functional outcome quality measures. The differences in measure specifications and the TEP feedback are presented in the TEP Summary Report, which is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, based on the evidence provided above, we are proposing to adopt the quality measure entitled, the Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635), for use in the SNF QRP beginning with the FY 2020 program.

Data for the proposed quality measure, the Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635), would be collected using the MDS, with the submission through the QIES ASAP system. For more information on SNF QRP reporting through the QIES ASAP system, refer to CMS Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality->

Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html.

The calculation of the proposed quality measure would be based on the data collection of standardized items to be included in the MDS. The function items used to calculate this measure are the same set of functional status data items that have been added to the IRF-PAI version 1.4, for the purpose of providing standardized data elements under the domain of functional status. The collection of data by means of the standardized items would be obtained at admission and discharge. The standardized items used to calculate this proposed quality measure do not duplicate existing items currently used for data collection within the MDS. The quality measure and standardized data element specifications for the Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635) can be found on the SNF QRP Measures and Technical Information Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

If finalized for implementation into the SNF QRP, the MDS would be modified so as to enable us to calculate the proposed measure using additional data elements that are standardized with the IRF-PAI and such data would be obtained at the time of admission and discharge for all SNF residents covered under a Part A stay.

We invite public comments on our proposal to adopt the quality measure entitled, the Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635) beginning with the FY 2020 SNF QRP.

(d) Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636)

This proposed quality measure is an application of the outcome quality measure finalized in the IRF QRP entitled, IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636). This proposed quality measure estimates the percentage of SNF residents who meet or exceed an expected discharge mobility score. A summary of this quality measure can be accessed on the NQF Web site: <http://www.qualityforum.org/qps/2636>.

Detailed specifications for this quality measure can be accessed at <http://www.qualityforum.org/ProjectTemplateDownload.aspx?SubmissionID=2636>.

As previously noted, residents seeking care in SNFs include individuals whose illness, injury, or condition has resulted in a loss of function, and for whom rehabilitative care is expected to help regain that function. Several studies found patients' functional outcomes vary based on treatment by physical and occupational therapists. Therapy was associated with greater functional gains, shorter stays, and a greater likelihood of discharge to community. Among SNF residents receiving rehabilitation services, the amount of treatment prescribed can vary widely, and this variation is not associated with resident characteristics. This variation in rehabilitation services supports the need to monitor SNF resident's functional outcomes, as we believe there is an opportunity for improvement in this area.

The proposed functional outcome measure, Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636), requires the collection of admission and discharge functional status data by trained clinicians using standardized data elements that assess specific functional mobility activities such as bed mobility and walking. These standardized mobility items are daily activities that clinicians typically assess at the time of admission and/or discharge to determine residents' needs, evaluate resident progress and prepare residents and families for a transition to home or to another care provider. The standardized mobility function items are coded using a 6-level rating scale that indicates the resident's level of independence with the activity; higher scores indicate more independence.

The functional assessment items included in the proposed outcome quality measures were originally developed and tested as part of the Post-Acute Care Payment Reform Demonstration version of the CARE Item Set, which was designed to standardize assessment of patients' status across acute and post-acute providers, including SNFs, HHAs, IRFs, and LTCHs and Current Assessment Comparisons: Volume 3 of 3.³³ The reports are available on CMS' Post-Acute Care Quality Initiatives Web page at <http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality->

[Initiatives/CARE-Item-Set-and-B-CARE.html](http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/CARE-Item-Set-and-B-CARE.html).

This proposed quality measure requires the collection of risk factors data, such as resident functioning prior to the current reason for admission, history of falls, bladder continence, communication ability and cognitive function, at the time of admission.

A cross-setting function TEP convened by our measure development contractor on September 9, 2013 provided input on the initial technical specifications of this proposed quality measure, Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636). The TEP was supportive of the implementation of this measure and supported our efforts to standardize patient assessment data elements. The TEP summary report is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

The MAP met on December 14 and 15, 2015, and provided input on the proposed measure, Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636), for use in the SNF QRP. The MAP recognized that this proposed quality measure is an adaptation of a currently endorsed measure for the IRF population, and encouraged continued development to ensure alignment of this measure across PAC settings. The MAP noted there should be some caution in the interpretation of measure results due to patient/resident differentiation between facilities. The MAP also stressed the importance of considering burden on providers when measures are considered for implementation. The MAP also noted possible duplication as the MDS already includes function data elements. The data elements for the proposed measure are similar, but not the same as the existing MDS function data elements. The data elements for the proposed measure include those that are the proposed standardized patient data elements for function. The MAP's overall recommendation was to "encourage further development." More information about the MAP's recommendations for this proposed measure is available at <http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=81593>.

Since the MAP's review and recommendation for further development, we have continued to develop this measure including

soliciting input via a TEP, proving a public comment opportunity and providing an update on measure development to the MAP via the feedback loop. More specifically, our measure development contractor convened a SNF-specific TEP on May 5, 2016, to provide further input on the technical specifications of this proposed quality measure by reviewing the IRF specifications and the specifications of competing and related function quality measures. Overall, the TEP was supportive of the measure and supported our efforts to standardize patient/resident assessment data elements. The SNF-specific function TEP summary report is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

We also solicited stakeholder feedback on the development of this measure by means of a public comment period open from October 7, 2016, until November 4, 2016. There was general support of the measure concept and the importance of functional improvement. Comments on the measure varied, with some commenters supportive of the measure, while others were either not in favor of the measure, or suggested potential modifications to the measure specifications.

The public comment summary report for the proposed measure is available on the CMS Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

We also engaged with stakeholders when we presented an update on the development of this quality measure to the MAP on October 19, 2016, during a MAP feedback loop meeting. Slides from that meeting are available at <http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=83640>.

During the development of this measure, we have monitored and reviewed the NQF-endorsed measures that are competing and related. We identified seven competing and related quality measures focused on mobility functional improvement for residents in the SNF setting entitled: (1) CARE: Improvement in Mobility (NQF #2612); (2) Functional Change: Change in Mobility Score (NQF #2774); (3) Functional Status Change for Patients with Knee Impairments (NQF #0422); (4) Functional Status Change for

³³ Ibid.

Patients with Hip Impairments (NQF #0423); (5) Functional Status Change for Patients with Foot and Ankle Impairments (NQF #0424); (6) Functional Status Change for Patients with Lumbar Impairments (NQF #0425); and (7) Change in Basic Mobility as Measures by the AM-PAC (NQF #0429). As described above, we reviewed the technical specifications for these seven measures carefully and compared them with the specifications of the proposed quality measure, Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636) and have noted the following differences in the technical specifications: (1) The number of risk adjustors and variance explained by these risk adjustors in the regression models; (2) the use of functional assessment items that were developed and tested for cross-setting use; (3) the use of items that are already on the MDS 3.0 and what this means for burden; (4) the handling of missing functional status data; and (5) the use of exclusion criteria that are baseline clinical conditions.

Consistent with the other functional outcome measures, the specifications for this proposed quality measure, Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636), were developed based on our literature review, input from technical expert panels, public comment feedback and data analyses. The details about how the specifications for the measures differ as described in the previous functional outcome measure sections, also apply to this proposed quality measure.

Our measure developer contractor presented and discussed these technical specification differentiations during the May 6, 2016 TEP meeting in order to obtain TEP input on preferred specifications for valid functional outcome quality measures. The differences in measure specifications and the TEP feedback are presented in the TEP Summary Report, which is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, based on the evidence provided above, we are proposing to adopt the quality measure entitled, the Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636), for use beginning with the FY 2020 SNF QRP.

Data for the proposed quality measure, the Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636), would be collected using the MDS, with the submission through the QIES ASAP system. Additional information on SNF QRP reporting through the QIES ASAP system can be found on the CMS Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

The calculation of the proposed quality measure would be based on the data collection of standardized items to be included in the MDS. The function items used to calculate this measure are the same set of functional status data items that have been added to the IRF-PAI version 1.4, for the purpose of providing standardized data elements under the domain of functional status. The collection of data by means of the standardized items would be obtained at admission and discharge. The standardized items used to calculate this proposed quality measure do not duplicate existing items currently used for data collection within the MDS. The quality measure and standardized data element specifications for the Application of IRF Functional Outcome Measure: Discharge Change in Mobility Score for Medical Rehabilitation Patients (NQF #2636) can be found on the SNF QRP Measures and Technical Information Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

If finalized for implementation into the SNF QRP, the MDS would be modified so as to enable us to calculate the proposed measure using additional data elements that are standardized with the IRF-PAI and such data would be obtained at the time of admission and discharge for all SNF residents covered under a Part A stay.

We invite public comments on our proposal to adopt the quality measure entitled, the Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636) beginning with the FY 2020 SNF QRP.

8. Proposed Modifications to Potentially Preventable 30-Days Post-Discharge Readmission Measure for Skilled Nursing Facility (SNF) Quality Reporting Program (QRP)

In the FY 2017 SNF PPS final rule (81 FR 52030 through 52034), we adopted the Potentially Preventable 30-Day Post-Discharge Readmission Measure for SNF QRP. This measure was developed to meet section 1899B(d)(1)(C) of the Act, which calls for measures to reflect all-condition risk-adjusted potentially preventable hospital readmission rates for PAC providers, including SNFs.

This measure was specified to be calculated using 1 year of Medicare FFS claims data; however, we are proposing to increase the measurement period to 2 years of claims data. The rationale for this proposed change is to expand the number of SNFs with 25 stays or more, which is the minimum number of stays that we require for public reporting. Furthermore, this modification will align the SNF measure more closely with other potentially preventable hospital readmission measures developed to meet the IMPACT Act requirements and adopted for the IRF and LTCH QRPs, which are calculated using 2 consecutive years of data.

We also propose to update the dates associated with public reporting of SNF performance on this measure. In the FY 2017 SNF PPS final rule (81 FR 52030 through 52034), we finalized initial confidential feedback reports by October 2017 for this measure based on 1 calendar year of claims data from discharges during CY 2016 and public reporting by October 2018 based on data from CY 2017. However, to make these measure data publicly available by October 2018, we propose to shift this measure from calendar year to fiscal year, beginning with publicly reporting on claims data for discharges in fiscal years 2016 and 2017.

Additional information regarding the Potentially Preventable 30-Day Post-Discharge Readmission Measure for SNF QRP can be found at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

We are inviting public comment on our proposal to increase the length of the measurement period and to update the public reporting dates for this measure.

9. SNF QRP Quality Measures Under Consideration for Future Years

We are inviting comment on the importance, relevance, appropriateness, and applicability of each of the quality measures listed in Table 19 for future years in the SNF QRP.

We are considering a measure focused on pain that relies on the collection of patient-reported pain data, and another measure regarding the Percent of Residents Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine. Finally, we are considering a measure related to patient safety, that is, Patients Who Received an Antipsychotic Medication.

a. IMPACT Act Measure—Possible Future Update to Measure Specifications

In the FY 2017 SNF PPS final rule (81 FR 52021 through 52029), we finalized the Discharge to Community-Post Acute Care (PAC) Skilled Nursing Facility (SNF) Quality Reporting Program (QRP) measure, which assesses successful discharge to the community from a SNF setting, with successful discharge to the community including no unplanned rehospitalizations and no death in the

31 days following discharge from the SNF. We received public comments (see 81 FR 52025 through 52026) recommending exclusion of baseline nursing facility residents from the measure, as these residents did not live in the community prior to their SNF stay. At that time, we highlighted that using Medicare FFS claims alone, we were unable to accurately identify baseline nursing facility residents. We stated that potential future modifications of the measure could include assessment of the feasibility and impact of excluding baseline nursing facility residents from the measure through the addition of patient assessment-based data. In response to these public comments, we are considering a future modification of the Discharge to Community-PAC SNF QRP measure, which would exclude baseline nursing facility residents from the measure. Further, this measure is specified to be calculated using one year of Medicare FFS claims data. We are considering expanding the measurement period in the future to two consecutive years of data to increase SNF sample sizes and reduce the number of SNFs with fewer than 25 stays that would

otherwise be excluded from public reporting. This modification would also align the measurement period with that of the discharge to community measures adopted for the IRF and LTCH Quality Reporting Programs to meet the IMPACT Act requirements; both the IRF and LTCH measures have measurement periods of two consecutive years.

We are inviting public comment on these considerations for Discharge to Community-PAC SNF QRP measure in future years of the SNF QRP.

b. IMPACT Act Implementation Update

As a result of the input and suggestions provided by technical experts at the TEPs held by our measure developer, and through public comment, we are engaging in additional development work for two measures that would satisfy 1899B(c)(1)(E) of the Act, including performing additional testing. We intend to specify these measures under section 1899B(c)(1)(E) of the Act no later than October 1, 2018 and we intend to propose to adopt them for the FY 2021 SNF QRP, with data collection beginning on or about October 1, 2019.

TABLE 19—SNF QRP QUALITY MEASURES UNDER CONSIDERATION FOR FUTURE YEARS

NQS priority	Patient- and Caregiver-Centered Care
Measure	• Application of Percent of Residents Who Self-Report Moderate to Severe Pain.
NQS Priority	Health and Well-Being
Measure	• Application of Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine.
NQS Priority	Patient Safety
Measure	• Percent of SNF Residents Who Newly Received an Antipsychotic Medication.
NQS Priority	Communication and Care Coordination
Measure	• Modification of the Discharge to Community-Post Acute Care (PAC) Skilled Nursing Facility (SNF) Quality Reporting Program (QRP) measure.

10. Proposed Standardized Resident Assessment Data Reporting for the SNF QRP

a. Proposed Standardized Resident Assessment Data Reporting for the FY 2019 SNF QRP

Section 1888(e)(6)(B)(i)(III) of the Act requires that for fiscal year 2019 and each subsequent year, SNFs report standardized patient assessment data required under section 1899B(b)(1) of the Act. As we describe in more detail above, we are proposing that the current pressure ulcer measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened

(Short Stay) (NQF #0678), be replaced with the proposed pressure ulcer measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, beginning with the FY 2020 SNF QRP. The current pressure ulcer measure will remain in the SNF QRP until that time. Accordingly, for the requirement that SNFs report standardized patient assessment data for the FY 2019 SNF QRP, we are proposing that the data elements used to calculate that measure meet the definition of standardized patient assessment data for medical conditions and co-morbidities under section 1899B(b)(1)(B)(iv) and that the successful reporting of that data under

section 1888(e)(6)(B)(i)(II) for admissions as well as discharges occurring during fourth quarter CY 2017 would also satisfy the requirement to report standardized patient assessment data for the FY 2019 SNF QRP.

The collection of assessment data pertaining to skin integrity, specifically pressure related wounds, is important for multiple reasons. Clinical decision support, care planning, and quality improvement all depend on reliable assessment data collection. Pressure related wounds represent poor outcomes, are a serious medical condition that can result in death and disability, are debilitating, painful and

are often an avoidable outcome of medical care.^{34 35 36 37 38 39} Pressure related wounds are considered health care acquired conditions.

As we note above, the data elements needed to calculate the current pressure ulcer measure are already included on the MDS and reported for SNFs, and exhibit validity and reliability for use across PAC providers. Item reliability for these data elements was also tested for the nursing home setting during implementation of MDS 3.0. Testing results are from the RAND Development and Validation of MDS 3.0 project.⁴⁰ The RAND pilot test of the MDS 3.0 data elements showed good reliability and is also applicable to both the IRF-PAI and the LTCH CARE Data Set because the data elements tested are the same. Across the pressure ulcer data elements, the average gold-standard nurse to gold-standard nurse kappa statistic was 0.905. The average gold-standard nurse to facility-nurse kappa statistic was 0.937. Data elements used to risk adjust this quality measure were also tested under this same pilot test, and the gold-standard to gold-standard kappa statistic, or percent agreement (where kappa statistic not available), ranged from 0.91 to 0.99 for these data elements. These kappa scores indicate “almost perfect” agreement using the Landis and Koch standard for strength of agreement.⁴¹

The data elements used to calculate the current pressure ulcer measure received public comment on several occasions, including when that measure was proposed in the FY 2012 IRF PPS (76 FR 47876) and IPPS/LTCH PPS proposed rules (76 FR 51754). Further, they were discussed in the past by TEPs

held by our measure development contractor on June 13 and November 15, 2013, and recently by a TEP on July 18, 2016. TEP members supported the measure and its cross-setting use in PAC. The report, Technical Expert Panel Summary Report: Refinement of the Percent of Patients or Residents with Pressure Ulcers that are New or Worsened (Short-Stay) (NQF #0678) Quality Measure for Skilled Nursing Facilities (SNFs), Inpatient Rehabilitation Facilities (IRFs), Long-Term Care Hospitals (LTCHs), and Home Health Agencies (HHAs), is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care/Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

We are inviting public comment on this proposal.

b. Proposed Standardized Resident Assessment Data Reporting Beginning With the FY 2020 SNF QRP

We describe below our proposals for the reporting of standardized patient assessment data by SNFs beginning with the FY 2020 SNF QRP. SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018, with the exception of two data elements (Hearing and Vision) that would be required for SNF admissions at the start of the Medicare Part A stay only that occur between October 1, 2018, and December 31, 2018. The Hearing and Vision data elements would be assessed at admission only due to the relatively stable nature of hearing impairment and vision impairment, making it unlikely that these assessments would change between the start and end of the SNF stay. Assessment of the Hearing and Vision data elements at discharge would introduce additional burden without improving the quality or usefulness of the data, and is unnecessary. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting. In selecting the data elements described below, we carefully weighed the balance of burden in assessment-based data collection and aimed to minimize additional burden through the utilization of existing data in the assessment instruments. We also note that the patient and resident assessment instruments are considered part of the medical record, and sought the inclusion of data elements relevant to patient care.

We also took into consideration the following factors for each data element: Overall clinical relevance; ability to support clinical decisions, care planning and interoperable exchange to facilitate care coordination during transitions in care; and the ability to capture medical complexity and risk factors that can inform both payment and quality. Additionally the data elements had to have strong scientific reliability and validity; be meaningful enough to inform longitudinal analysis by providers; had to have received general consensus agreement for its usability; and had to have the ability to collect such data once but support multiple uses. Further, to inform the final set of data elements for proposal, we took into account technical and clinical subject matter expert review, public comment and consensus input in which such principles were applied. We also took into account the consensus work and empirical findings from the PAC-PRD. We acknowledge that during the development process that led to these proposals, some providers expressed concern that changes to the MDS to accommodate standardized patient assessment data reporting would lead to an overall increased reporting burden. However, we note that there is no additional data collection burden for standardized data already collected and submitted on the quality measures.

c. Proposed Standardized Resident Assessment Data by Category

(1) Functional Status Data

We are proposing that the data elements currently reported by SNFs to calculate the measure, Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631), would also meet the definition of standardized patient assessment data for functional status under section 1899B(b)(1)(B)(i) of the Act, and that the successful reporting of that data under section 1886(m)(5)(F)(i) of the Act would also satisfy the requirement to report standardized patient assessment data under section 1886(m)(5)(F)(ii) of the Act.

These patient assessment data for functional status are from the CARE Item Set. The development of the CARE Item Set and a description and rationale for each item is described in a report entitled “The Development and Testing of the Continuity Assessment Record and Evaluation (CARE) Item Set: Final Report on the Development of the CARE

³⁴ Casey, G. (2013). “Pressure ulcers reflect quality of nursing care.” *Nurs N Z* 19(10): 20–24.

³⁵ Gorzoni, M.L. and S.L. Pires (2011). “Deaths in nursing homes.” *Rev Assoc Med Bras* 57(3): 327–331.

³⁶ Thomas, J.M., et al. (2013). “Systematic review: health-related characteristics of elderly hospitalized adults and nursing home residents associated with short-term mortality.” *J Am Geriatr* 61(6): 902–911.

³⁷ White-Chu, E.F., et al. (2011). “Pressure ulcers in long-term care.” *Clin Geriatr Med* 27(2): 241–258.

³⁸ Bates-Jensen BM. Quality indicators for prevention and management of pressure ulcers in vulnerable elders. *Ann Int Med*. 2001;135 (8 Part 2), 744–51.

³⁹ Bennet, G., Dealy, C., Posnett, J. (2004). The cost of pressure ulcers in the UK. *Age and Aging*, 33(3):230–235.

⁴⁰ Saliba, D., & Buchanan, J. (2008, April). *Development and validation of a revised nursing home assessment tool: MDS 3.0*. Contract No. 500–00–0027/Task Order #2. Santa Monica, CA: Rand Corporation. Retrieved from <http://www.cms.hhs.gov/NursingHomeQualityInits/Downloads/MDS30FinalReport.pdf>.

⁴¹ Landis, R., & Koch, G. (1977, March). The measurement of observer agreement for categorical data. *Biometrics* 33(1), 159–174.

Item Set: Volume 1 of 3.”⁴² Reliability and validity testing were conducted as part of CMS’ Post-Acute Care Payment Reform Demonstration, and we concluded that the functional status items have acceptable reliability and validity. A description of the testing methodology and results are available in several reports, including the report entitled “The Development and Testing of the Continuity Assessment Record And Evaluation (CARE) Item Set: Final Report On Reliability Testing: Volume 2 of 3”⁴³ and the report entitled “The Development and Testing of the Continuity Assessment Record And Evaluation (CARE) Item Set: Final Report on Care Item Set and Current Assessment Comparisons: Volume 3 of 3.”⁴⁴ The reports are available on CMS’ Post-Acute Care Quality Initiatives Web page at <http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/CARE-Item-Set-and-B-CARE.html>. For more information about this quality measure, we refer readers to the FY 2016 SNF PPS final rule (80 FR 46444 through 46453).

We are inviting public comment on this proposal.

(2) Cognitive Function and Mental Status Data

Cognitive function and mental status in PAC patient and resident populations can be affected by a number of underlying conditions, including dementia, stroke, traumatic brain injury, side effects of medication, metabolic and/or endocrine imbalances, delirium, and depression.⁴⁵ The assessment of cognitive function and mental status by PAC providers is important because of the high percentage of patients and residents with these conditions,⁴⁶ and the opportunity for improving the quality of care. Symptoms of dementia may improve with pharmacotherapy, occupational therapy, or physical activity,^{47 48 49} and promising treatments

for severe traumatic brain injury are currently being tested.⁵⁰ For older patients and residents diagnosed with depression, treatment options to reduce symptoms and improve quality of life include antidepressant medication and psychotherapy,^{51 52 53 54} and targeted services, such as therapeutic recreation, exercise, and restorative nursing, to increase opportunities for psychosocial interaction.⁵⁵

Accurate assessment of cognitive function and mental status of patients and residents in PAC would be expected to have a positive impact on the National Quality Strategy’s domains of patient and family engagement, patient safety, care coordination, clinical process/effectiveness, and efficient use of health care resources. For example, standardized assessment of cognitive function and mental status of patients and residents in PAC will support establishing a baseline for identifying changes in cognitive function and mental status (for example, delirium), anticipating the patient or resident’s ability to understand and participate in treatments during a PAC stay, ensuring patient and resident safety (for example, risk of falls), and identifying appropriate support needs at the time of discharge or transfer. Standardized assessment data elements will enable or support clinical decision-making and early clinical intervention; person-centered,

high quality care through: Facilitating better care continuity and coordination; better data exchange and interoperability between settings; and longitudinal outcome analysis. Hence, reliable data elements assessing cognitive impairment and mental status are needed in order to initiate a management program that can optimize a patient or resident’s prognosis and reduce the possibility of adverse events.

(a) Brief Interview for Mental Status (BIMS)

We are proposing that the data elements that comprise the Brief Interview for Mental Status meet the definition of standardized patient assessment data for cognitive function and mental status under section 1899B(b)(1)(B)(ii) of the Act. The proposed data elements consist of seven BIMS questions that result in a cognitive function score. For more information on the BIMS, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

Dementia and cognitive impairment are associated with long-term functional dependence and, consequently, poor quality of life and increased health care costs and mortality.⁵⁶ This makes assessment of mental status and early detection of cognitive decline or impairment critical in the PAC setting. The burden of cognitive impairment in PAC is high. The intensity of routine nursing care is higher for patients and residents with cognitive impairment than those without, and dementia is a significant variable in predicting readmission after discharge to the community from PAC providers.⁵⁷ The BIMS data elements are currently in use in two of the PAC assessments: The MDS 3.0 in SNFs and the IRF-PAI in IRFs. The BIMS was tested in the PAC PRD where it was found to have substantial to almost perfect agreement for inter-rater reliability (kappa range of 0.71 to 0.91) when tested in all four PAC

⁴² Graff M.J., Vernooij-Dassen M.J., Thijssen M., Dekker J., Hoefnagels W.H., Rikkert M.G.O. (2006). Community Based Occupational Therapy for Patients with Dementia and their Care Givers: Randomised Controlled Trial. *BMJ*, 333(7580): 1196.

⁴⁹ Bherer L., Erickson K.I., Liu-Ambrose T. (2013). A Review of the Effects of Physical Activity and Exercise on Cognitive and Brain Functions in Older Adults. *Journal of Aging Research*, 657508.

⁵⁰ Giacino J.T., Whyte J., Bagiella E., et al. (2012). Placebo-controlled trial of amantadine for severe traumatic brain injury. *New England Journal of Medicine*, 366(9), 819–826.

⁵¹ Alexopoulos G.S., Katz I.R., Reynolds C.F. 3rd, Carpenter D., Docherty J.P., Ross R.W. (2001). Pharmacotherapy of depression in older patients: A summary of the expert consensus guidelines. *Journal of Psychiatric Practice*, 7(6), 361–376.

⁵² Arean P.A., Cook B.L. (2002). Psychotherapy and combined psychotherapy/pharmacotherapy for late life depression. *Biological Psychiatry*, 52(3), 293–303.

⁵³ Hollon S.D., Jarrett R.B., Nierenberg A.A., Thase M.E., Trivedi M., Rush A.J. (2005). Psychotherapy and medication in the treatment of adult and geriatric depression: which monotherapy or combined treatment? *Journal of Clinical Psychiatry*, 66(4), 455–468.

⁵⁴ Wagenaar D, Colenda CC, Kreft M, Sawade J, Gardiner J, Poverejan E. (2003). Treating depression in nursing homes: practice guidelines in the real world. *J Am Osteopath Assoc*. 103(10), 465–469.

⁵⁵ Crespy SD, Van Haitsma K, Kleban M, Hann CJ. Reducing Depressive Symptoms in Nursing Home Residents: Evaluation of the Pennsylvania Depression Collaborative Quality Improvement Program. *J Healthc Qual*. 2016. Vol. 38, No. 6, pp. e76–e88.

⁴² Barbara Gage et al., “The Development and Testing of the Continuity Assessment Record and Evaluation (CARE) Item Set: Final Report on the Development of the CARE Item Set” (RTI International, 2012).

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ National Institute on Aging. (2014). Assessing Cognitive Impairment in Older Patients. A Quick Guide for Primary Care Physicians. Retrieved from <https://www.nia.nih.gov/alzheimers/publication/assessing-cognitive-impairment-older-patients>.

⁴⁶ Gage B., Morley M., Smith L., et al. (2012). Post-Acute Care Payment Reform Demonstration (Final report, Volume 4 of 4). Research Triangle Park, NC: RTI International.

⁴⁷ Casey D.A., Antimisiaris D., O’Brien J. (2010). Drugs for Alzheimer’s Disease: Are They Effective? *Pharmacology & Therapeutics*, 35, 208–11.

⁵⁶ Agüero-Torres, H., Fratiglioni, L., Guo, Z., Viitanen, M., von Strauss, E., & Winblad, B. (1998). “Dementia is the major cause of functional dependence in the elderly: 3-year follow-up data from a population-based study.” *Am J of Public Health* 88(10): 1452–1456.

⁵⁷ RTI International. Proposed Measure Specifications for Measures Proposed in the FY 2017 LTCH QRP NPRM. Research Triangle Park, NC. 2016.

settings.⁵⁸ Clinical and subject matter expert advisors working with our data element contractor agreed that the BIMS is a feasible data element for use by PAC providers. Additionally, discussions during a TEP convened on April 6 and 7, 2016, demonstrated support for the BIMS. The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data Technical Expert Panel Summary Report is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

To solicit additional feedback on the BIMS, we requested public comment from August 12 to September 12, 2016. Many commenters expressed support for use of the BIMS, noting that it is reliable, feasible to use across settings, and will provide useful information about patients and residents. These comments noted that the data collected through the BIMS will provide a clearer picture of patient or resident complexity, help with the care planning process, and be useful during care transitions and when coordinating across providers. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing to adopt the BIMS for use in the SNF QRP. As noted above in this section, the BIMS is already included on the MDS. For purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(b) Confusion Assessment Method (CAM)

We are proposing that the data elements that comprise the Confusion Assessment Method (CAM) meet the definition of standardized patient assessment data for cognitive function and mental status under section 1899B(b)(1)(B)(ii) of the Act. The CAM is a six-question instrument that screens for overall cognitive impairment, as well as distinguishes delirium or reversible

confusion from other types of cognitive impairment. For more information on the CAM, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

The CAM was developed to identify the signs and symptoms of delirium. It results in a score that suggests whether the patient or resident should be assigned a diagnosis of delirium. Because patients and residents with multiple comorbidities receive services from PAC providers, it is important to assess delirium, which is associated with a high mortality rate and prolonged duration of stay in hospitalized older adults.⁵⁹ Assessing these signs and symptoms of delirium is clinically relevant for care planning by PAC providers.

The CAM is currently in use in two of the PAC assessments: The MDS 3.0 in SNFs and the LCDS in LTCHs. The CAM was tested in the PAC PRD where it was found to have substantial agreement for inter-rater reliability for the “Inattention and Disorganized Thinking” questions (kappa range of 0.70 to 0.73); and moderate agreement for the “Altered Level of Consciousness” question (kappa of 0.58).⁶⁰

Clinical and subject matter expert advisors working with our data element contractor agreed that the CAM is feasible for use by PAC providers, that it assesses key aspects of cognition, and that this information about patient or resident cognition would be clinically useful both within and across PAC provider types. The CAM was also supported by a TEP that discussed and rated candidate data elements during a meeting on April 6 and 7, 2016. The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data Technical Expert Panel Summary Report is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute->

⁵⁹ Fick, D.M., Steis, M.R., Waller, J.L., & Inouye, S.K. (2013). “Delirium superimposed on dementia is associated with prolonged length of stay and poor outcomes in hospitalized older adults.” *J of Hospital Med* 8(9): 500–505.

⁶⁰ Gage B., Morley M., Smith L., et al. (2012). *Post-Acute Care Payment Reform Demonstration* (Final report, Volume 2 of 4). Research Triangle Park, NC: RTI International.

Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html. We requested public comment on the CAM from August 12 to September 12, 2016. Many commenters expressed support for use of the CAM, noting that it would provide important information for care planning and care coordination, and therefore, contribute to quality improvement. The commenters noted it is particularly helpful in distinguishing delirium and reversible confusion from other types of cognitive impairment. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing to adopt the CAM for use in the SNF QRP. As noted above, the CAM is already included on the MDS. For purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(c) Behavioral Signs and Symptoms

We are proposing that the Behavioral Signs and Symptoms data elements meet the definition of standardized patient assessment data for cognitive function and mental status under section 1899B(b)(1)(B)(ii) of the Act. The proposed data elements consist of three Behavioral Signs and Symptoms questions and result in three scores that categorize respondents as having or not having certain types of behavioral signs and symptoms. For more information on the Behavioral Signs and Symptoms data elements, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

The questions included in the Behavioral Signs and Symptoms group assess whether the patient or resident has exhibited any behavioral symptoms

that may indicate cognitive impairment or other mental health issues during the assessment period, including physical, verbal, and other disruptive or dangerous behavioral symptoms, but excluding patient wandering. Such behavioral disturbances can indicate unrecognized needs and care preferences and are associated most commonly with dementia and other cognitive impairment, and less commonly with adverse drug events, mood disorders, and other conditions. Assessing behavioral disturbances can lead to early intervention, patient- and resident-centered care planning, clinical decision support, and improved staff and patient or resident safety through early detection. Assessment and documentation of these disturbances can help inform care planning and patient transitions and provide important information about resource use.

Data elements that capture behavioral symptoms are currently included in two of the PAC assessments: The MDS 3.0 in SNFs and the OASIS-C2 in HHAs. In the MDS, each question includes four response options ranging from “behavior not exhibited” (0) to behavior “occurred daily” (3). The OASIS-C2 includes some similar data elements which record the frequency of disruptive behaviors on a 6-point scale ranging from “never” (0) to “at least daily” (5). Data elements that mirror those used in the MDS and serve the same assessment purpose were tested in post-acute providers in the PAC PRD and found to be clinically relevant, meaningful for care planning, and feasible for use in each of the four PAC settings.⁶¹

The proposed data elements were supported by comments from the Standardized Patient Assessment Data TEP held by our data element contractor. The TEP identified patient and resident behaviors as an important consideration for resource intensity and care planning, and affirmed the importance of the standardized assessment of patient behaviors through data elements such as those in use in the MDS. The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data Technical Expert Panel Summary Report is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/>

⁶¹Gage B., Morley M., Smith L., et al. (2012). Post-Acute Care Payment Reform Demonstration (Final report, Volume 2 of 4). Research Triangle Park, NC: RTI International.

IMPACT-Act-Downloads-and-Videos.html

Because the PAC PRD version of the Behavioral Signs and Symptoms data elements were previously tested across PAC providers, we solicited additional feedback on this version of the data elements by including these data elements in a call for public comment that was open from August 12 to September 12, 2016. Consistent with the TEP discussion on the importance of patient and resident behaviors, many commenters expressed support for use of the Behavioral Signs and Symptoms data elements, noting that they would provide useful information about patient and resident behavior at both admission and discharge and contribute to care planning related to what treatment is appropriate for the patient or resident and what resources are needed. Public comment also supported the use of highly similar MDS version of the data element in order to provide continuity with existing assessment processes in SNFs. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing the MDS version of the Behavioral Signs and Symptoms data elements because they focus more closely on behavioral symptoms than the OASIS data elements, and include more detailed response categories than those used in the PAC PRD version, capturing more information about the frequency of behaviors. As noted above, the Behavioral Signs and Symptoms data elements are already included on the MDS. For purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(d) Patient Health Questionnaire-2 (PHQ-2)

We are proposing that the PHQ-2 data elements meet the definition of standardized patient assessment data for cognitive function and mental status under section 1899B(b)(1)(B)(ii) of the Act. The proposed data elements consist

of the PHQ-2 two-item questionnaire that assesses the cardinal criteria for depression: Depressed mood and anhedonia (inability to feel pleasure). For more information on the PHQ-2, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

Depression is a common mental health condition often missed and under-recognized. Assessments of depression help PAC providers better understand the needs of their patients and residents by: Prompting further evaluation (that is, to establish a diagnosis of depression); elucidating the patient's or resident's ability to participate in therapies for conditions other than depression during their stay; and identifying appropriate ongoing treatment and support needs at the time of discharge. A PHQ-2 score beyond a predetermined threshold signals the need for additional clinical assessment in order to determine a depression diagnosis.

The proposed data elements that comprise the PHQ-2 are currently used in the OASIS-C2 for HHAs and the MDS 3.0 for SNFs (as part of the PHQ-9). The PHQ-2 data elements were tested in the PAC PRD, where they were found to have almost perfect agreement for inter-rater reliability (kappa range of 0.84 to 0.91) when tested by all four PAC providers.⁶²

Clinical and subject matter expert advisors working with our data element contractor agreed that the PHQ-2 is feasible for use in PAC, that it assesses key aspects of mental status, and that this information about patient or resident mood would be clinically useful both within and across PAC provider types. We note that both the PHQ-9 and the PHQ-2 were supported by TEP members who discussed and rated candidate data elements during a meeting on April 6 and 7, 2016. They particularly noted that the brevity of the PHQ-2 made it feasible with low burden for both assessors and PAC patients or residents. The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data Technical Expert Panel

⁶²Gage B., Smith L., Ross J. et al. (2012). The Development and Testing of the Continuity Assessment Record and Evaluation (CARE) Item Set (Final Report on Reliability Testing, Volume 2 of 3). Research Triangle Park, NC: RTI International.

Summary Report is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

To solicit additional feedback on the PHQ-2, we requested public comment from August 12 to September 12, 2016. Many commenters provided feedback on using the PHQ-2 for the assessment of mood. Overall, commenters believed that collecting these data elements across PAC provider types was appropriate, given the role that depression plays in well-being. Several commenters expressed support for an approach that would use PHQ-2 as a gateway to the longer PHQ-9 and would maintain the reduced burden on most patients and residents, as well as test administrators, which is a benefit of the PHQ-2, while ensuring that the PHQ-9, which exhibits higher specificity,⁶³ would be administered for patients and residents who showed signs and symptoms of depression on the PHQ-2. Specific comments are described in a full report available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing to adopt the PHQ-2 data elements for use in the SNF QRP. As noted above, the PHQ-2 data elements are already included on the MDS. For purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(3) Special Services, Treatments, and Interventions Data

Special services, treatments, and interventions performed in PAC can have a major effect on an individual's health status, self-image, and quality of life. The assessment of these special

services, treatments, and interventions in PAC is important to ensure the continuing appropriateness of care for the patients and residents receiving them, and to support care transitions from one PAC provider to another, an acute care hospital, or discharge.

Accurate assessment of special services, treatments, and interventions of patients and residents served by PAC providers are expected to have a positive impact on the National Quality Strategy's domains of patient and family engagement, patient safety, care coordination, clinical process/effectiveness, and efficient use of health care resources.

For example, standardized assessment of special services, treatments, and interventions used in PAC can promote patient and resident safety through appropriate care planning (for example, mitigating risks such as infection or pulmonary embolism associated with central intravenous access), and identifying life-sustaining treatments that must be continued, such as mechanical ventilation, dialysis, suctioning, and chemotherapy, at the time of discharge or transfer. Standardized assessment of these data elements will enable or support: Clinical decision-making and early clinical intervention; person-centered, high quality care through, for example, facilitating better care continuity and coordination; better data exchange and interoperability between settings; and longitudinal outcome analysis. Hence, reliable data elements assessing special services, treatments, and interventions are needed to initiate a management program that can optimize a patient or resident's prognosis and reduce the possibility of adverse events.

For payment and care planning purposes in SNFs, the MDS already collects information on many special services, treatments, and interventions that residents have received over the prior 14 days, and distinguishes whether the treatments were received in or outside of the facility. In order to standardize across PAC provider types, data elements on the proposed special services, treatments and interventions adopted for cross-setting use to fulfill the requirements of the IMPACT Act also assess treatments and interventions during the first 3 days of a resident's stay, and during the last 7 days of the stay (for Nutritional Therapies) and as currently collected, at the last 14 days of the stay (for all other treatments and therapies). The look-back time frames of the standardized items were designed to collect timely and accurate information to inform care planning at the current site of care and to support continuity of

care and transfer of key health information at the time of discharge or transfer to another PAC setting. The new response options will be embedded in the MDS, and all existing items will be retained for their current uses of payment and care planning.

We are proposing 15 special services, treatments, and interventions as presented below grouped by cancer treatments, respiratory treatments, other treatments, and nutritional approaches. A TEP convened by our data element contractor provided input on the 15 data elements for Special Services, Treatments, and Interventions. This TEP, held on January 5 and 6, 2017, opined that these data elements are appropriate for standardization because they would provide useful clinical information to inform care planning and care coordination. The TEP affirmed that assessment of these services and interventions is standard clinical practice, and that the collection of these data by means of a list and checkbox format would conform with common workflow for PAC providers. A full report of the TEP discussion is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

(a) Cancer Treatment: Chemotherapy (IV, Oral, Other)

We are proposing that the Chemotherapy (IV, Oral, Other) data elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data elements consist of the principal Chemotherapy data element and three sub-elements: IV Chemotherapy, Oral Chemotherapy, and Other. For more information on the Chemotherapy data element, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

Chemotherapy is a type of cancer treatment that uses drugs to destroy cancer cells. It is sometimes used when a patient has a malignancy (cancer), which is a serious, often life-threatening or life-limiting condition. Both intravenous (IV) and oral chemotherapy

⁶³ Arroll B, Goodyear-Smith F, Crengle S, Gunn J, Kerse N, Fishman T, et al. Validation of PHQ-2 and PHQ-9 to screen for major depression in the primary care population. *Annals of family medicine*. 2010;8(4):348–53. doi: 10.1370/afm.1139 pmid:20644190; PubMed Central PMCID: PMC2906530.

have serious side effects, including nausea/vomiting, extreme fatigue, risk of infection due to a suppressed immune system, anemia, and an increased risk of bleeding due to low platelet counts. Oral chemotherapy can be as potent as chemotherapy given by IV, but can be significantly more convenient and less resource-intensive to administer. Because of the toxicity of these agents, special care must be exercised in handling and transporting chemotherapy drugs. IV chemotherapy may be given by peripheral IV, but is more commonly given via an indwelling central line, which raises the risk of bloodstream infections. Given the significant burden of malignancy, the resource intensity of administering chemotherapy, and the side effects and potential complications of these highly-toxic medications, assessing the receipt of chemotherapy is important in the PAC setting for care planning and determining resource use.

The need for chemotherapy predicts resource intensity, both because of the complexity of administering these potent, toxic drug combinations under specific protocols, and because of what the need for chemotherapy signals about the patient's underlying medical condition. Furthermore, the resource intensity of IV chemotherapy is higher than for oral chemotherapy, as the protocols for administration and the care of the central line (if present) require significant resources.

The Chemotherapy (IV, Oral, Other) data elements consist of a principal data element and three sub-elements: IV chemotherapy, which is generally resource-intensive; oral chemotherapy, which is less invasive and generally less intensive with regard to administration protocols; and a third category provided to enable the capture of other less common chemotherapeutic approaches. This third category is potentially associated with higher risks and is more resource intensive due to delivery by other routes (for example, intraventricular or intrathecal).

The principal Chemotherapy data element is currently in use in the MDS 3.0. One proposed sub-element, IV Chemotherapy, was tested in the PAC PRD and found feasible for use in each of the four PAC settings. We solicited public comment on IV Chemotherapy from August 12 to September 12, 2016. Several commenters provided support for the data element and suggested it be included as standardized patient assessment data. Commenters stated that assessing the use of chemotherapy services is relevant to share across the care continuum to facilitate care coordination and care transitions and

noted the validity of the data element. Commenters also noted the importance of capturing all types of chemotherapy, regardless of route, and stated that collecting data only on patients and residents who received chemotherapy by IV would limit the usefulness of this standardized data element. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

As a result of the comments and input received from clinical and subject matter experts, we are proposing a principal Chemotherapy data element with three sub-elements, including Oral and Other for standardization. Our data element contractor then presented the proposed data elements to the Standardized Patient Assessment Data TEP on January 5 and 6, 2017, who supported these data elements for standardization. A full report of the TEP discussion is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>. Therefore, we are proposing that the Chemotherapy (IV, Oral, Other) data elements with a principal data element and three sub-elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to expand the existing Chemotherapy data element in the MDS to include sub-elements for IV, Oral, and Other, and that SNFs would be required to report these data for the FY 2020 SNF QRP for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(b) Cancer Treatment: Radiation

We are proposing that the Radiation data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of the single Radiation data element. For more information on the Radiation data

element, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

Radiation is a type of cancer treatment that uses high-energy radioactivity to stop cancer by damaging cancer cell DNA, but it can also damage normal cells. Radiation is an important therapy for particular types of cancer, and the resource utilization is high, with frequent radiation sessions required, often daily for a period of several weeks. Assessing whether a patient or resident is receiving radiation therapy is important to determine resource utilization because PAC patients and residents will need to be transported to and from radiation treatments, and monitored and treated for side effects after receiving this intervention. Therefore, assessing the receipt of radiation therapy, which would compete with other care processes given the time burden, would be important for care planning and care coordination by PAC providers.

The Radiation data element is currently in use in the MDS 3.0. This data element was not tested in the PAC PRD. However, public comment and other expert input on the Radiation data element supported its importance and clinical usefulness for patients in PAC settings, due to the side effects and consequences of radiation treatment on patients that need to be considered in care planning and care transitions. To solicit additional feedback on the Radiation data element we are proposing, we requested public comment from August 12 to September 12, 2016. Several commenters provided support for the data element, noting the relevance of this data element to facilitating care coordination and supporting care transitions, the feasibility of the item, and the potential for it to improve quality. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

The proposed data element was presented to and supported by the TEP held by our data element contractor on January 5–6, 2017, which opined that Radiation was important corollary

information about cancer treatment to collect alongside Chemotherapy (IV, Oral, Other), and that, because capturing this information is a customary part of clinical practice, the proposed data element would be feasible, reliable, and easily incorporated into existing workflow.

Therefore, we are proposing that the Radiation data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. As noted above, the Radiation data element is already included on the MDS. For purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(c) Respiratory Treatment: Oxygen Therapy (Continuous, Intermittent)

We are proposing that the Oxygen Therapy (Continuous, Intermittent) data elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data elements consist of the principal Oxygen data element and two sub-elements, "Continuous" (whether the oxygen was delivered continuously, typically defined as ≥ 14 hours per day), or "Intermittent." For more information on the Oxygen Therapy (Continuous, Intermittent) data elements, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

Oxygen therapy provides a patient or resident with extra oxygen when medical conditions such as chronic obstructive pulmonary disease, pneumonia, or severe asthma prevent the patient or resident from getting enough oxygen from breathing. Oxygen administration is a resource-intensive intervention, as it requires specialized equipment such as a source of oxygen,

delivery systems (for example, oxygen concentrator, liquid oxygen containers, and high-pressure systems), the patient interface (for example, nasal cannula or mask), and other accessories (for example, regulators, filters, tubing). These data elements capture patient or resident use of two types of oxygen therapy (continuous and intermittent) which are reflective of intensity of care needs, including the level of monitoring and bedside care required. Assessing the receipt of this service is important for care planning and resource use for PAC providers.

The proposed data elements were developed based on similar data elements that assess oxygen therapy, currently in use in the MDS 3.0 ("Oxygen Therapy") and OASIS-C2 ("Oxygen (intermittent or continuous)"), and a data element tested in the PAC PRD that focused on intensive oxygen therapy ("High O2 Concentration Delivery System with FiO2 > 40%").

As a result of input from expert advisors, we solicited public comment on the single data element, Oxygen (inclusive of intermittent and continuous oxygen use), from August 12 to September 12, 2016. Several commenters supported the importance of the Oxygen data element, noting feasibility of this item in PAC, and the relevance of it to facilitating care coordination and supporting care transitions, but suggesting that the extent of oxygen use be documented. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

As a result of public comment and input from expert advisors about the importance and clinical usefulness of documenting the extent of oxygen use, we expanded the single data element to include two sub-elements, intermittent and continuous.

Therefore, we are proposing that the Oxygen Therapy (Continuous, Intermittent) data elements with a principal data element and two sub-elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to expand the existing Oxygen Therapy data element in the MDS to include sub-elements for Continuous and Intermittent, and that SNFs would be required to report these data for the FY 2020 SNF QRP for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the

end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(d) Respiratory Treatment: Suctioning (Scheduled, as Needed)

We are proposing that the Suctioning (Scheduled, As needed) data elements meet the definition of standardized patient assessment data element for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data elements consist of the principal Suctioning data element, and two sub-elements, "Scheduled" and "As needed." These sub-elements capture two types of suctioning. "Scheduled" indicates suctioning based on a specific frequency, such as every hour; "As needed" means suctioning only when indicated. For more information on the Suctioning (Scheduled, As needed) data elements, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

Suctioning is a process used to clear secretions from the airway when a person cannot clear those secretions on his or her own. It is done by aspirating secretions through a catheter connected to a suction source. Types of suctioning include oropharyngeal and nasopharyngeal suctioning, nasotracheal suctioning, and suctioning through an artificial airway such as a tracheostomy tube. Oropharyngeal and nasopharyngeal suctioning are a key part of many patients' care plans, both to prevent the accumulation of secretions than can lead to aspiration pneumonias (a common condition in patients with inadequate gag reflexes), and to relieve obstructions from mucus plugging during an acute or chronic respiratory infection, which often lead to desaturations and increased respiratory effort. Suctioning can be done on a scheduled basis if the patient is judged to clinically benefit from regular interventions; or can be done as needed, such as when secretions become so prominent that gurgling or choking is noted, or a sudden

desaturation occurs from a mucus plug. As suctioning is generally performed by a care provider rather than independently, this intervention can be quite resource-intensive if it occurs every hour, for example, rather than once a shift. It also signifies an underlying medical condition that prevents the patient from clearing his/her secretions effectively (such as after a stroke, or during an acute respiratory infection). Generally, suctioning is necessary to ensure that the airway is clear of secretions which can inhibit successful oxygenation of the individual. The intent of suctioning is to maintain a patent airway, the loss of which can lead to death, or complications associated with hypoxia.

The proposed data elements are based on an item currently in use in the MDS 3.0 ("Suctioning" without the two sub-elements), and data elements tested in the PAC PRD that focused on the frequency of suctioning required for patients with tracheostomies ("Trach Tube with Suctioning; Specify most intensive frequency of suctioning during stay [Every ___ hours]").

Clinical and subject matter expert advisors working with our data element contractor agreed that the proposed Suctioning (Scheduled, As needed) data elements are feasible for use in PAC, and that they indicate important treatment that would be clinically useful to capture both within and across PAC providers. We solicited public comment on the suctioning data element currently included in the MDS 3.0 between August 12, to September 12, 2016. Several commenters wrote in support of this data element, noting feasibility of this item in PAC, and the relevance of this data element to facilitating care coordination and supporting care transitions. We also received comments suggesting that we examine the frequency of suctioning in order to better understand the use of staff time, the impact on a patient or resident's capacity to speak and swallow, and intensity of care required. Based on these comments, we decided to add two sub-elements (scheduled and as needed) to the suctioning element. The proposed data elements, Suctioning (Scheduled, As needed) includes both the principal suctioning data element that is included on the MDS 3.0 and two sub-elements, "scheduled" and "as needed." A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

A TEP convened by the data element contractor provided input on the proposed data elements. This TEP, held on January 5 and 6, 2017, opined that these data elements are appropriate for standardization because they would provide useful clinical information to inform care planning and care coordination. The TEP affirmed that assessment of these services and interventions is standard clinical practice. A full report of the TEP discussion is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing that the Suctioning (Scheduled, As needed) data elements with a principal data element and two sub-elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to expand the existing Suctioning data element in the MDS to include sub-elements for Scheduled and As needed, and that SNFs would be required to report these data for the FY 2020 SNF QRP for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(e) Respiratory Treatment:
Tracheostomy Care

We are proposing that the Tracheostomy Care data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of the single Tracheostomy Care data element. For more information on the Tracheostomy Care data element, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

A tracheostomy provides an air passage to help a patient or resident

breathe when the usual route for breathing is obstructed or impaired. Generally, in all of these cases, suctioning is necessary to ensure that the tracheostomy is clear of secretions which can inhibit successful oxygenation of the individual. Often, individuals with tracheostomies are also receiving supplemental oxygenation. The presence of a tracheostomy, albeit permanent or temporary, warrants careful monitoring and immediate intervention if the tracheostomy becomes occluded or in the case of a temporary tracheostomy, the device used becomes dislodged. While in rare cases the presence of a tracheostomy is not associated with increased care demands (and in some of those instances, the care of the ostomy is performed by the patient) in general the presence of such as device is associated with increased patient risk, and clinical care services will necessarily include close monitoring to ensure that no life-threatening events occur as a result of the tracheostomy, often considered part of the patient's life line. In addition, tracheostomy care, which primarily consists of cleansing, dressing changes, and replacement of the tracheostomy cannula (tube), is also a critical part of the care plan. Regular cleansing is important to prevent infection such as pneumonia and to prevent any occlusions with which there are risks for inadequate oxygenation.

The proposed data element is currently in use in the MDS 3.0 ("Tracheostomy care"). Data elements ("Trach Tube with Suctioning") that were tested in the PAC PRD included an equivalent principal data element on the presence of a tracheostomy. This data element was found feasible for use in each of the four PAC settings as the data collection aligned with usual work flow.

Clinical and subject matter expert advisors working with our data element contractor agreed that the Tracheostomy Care data element is feasible for use in PAC and that it assesses an important treatment that would be clinically useful both within and across PAC provider types.

We solicited public comment on this data element from August 12 to September 12, 2016. Several commenters wrote in support of this data element, noting the feasibility of this item in PAC, and the relevance of this data element to facilitating care coordination and supporting care transitions. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/>

IMPACT-Act-Downloads-and-Videos.html.

A TEP convened by the data element contractor provided input on the proposed data elements. This TEP, held on January 5 and 6, 2017, opined that these data elements are appropriate for standardization because they would provide useful clinical information to inform care planning and care coordination. The TEP affirmed that assessment of these services and interventions is standard clinical practice. A full report of the TEP discussion is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing that the Tracheostomy Care data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. As noted above, the Tracheostomy Care data element is already included on the MDS. For purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(f) Respiratory Treatment: Non-invasive Mechanical Ventilator (BiPAP, CPAP)

We are proposing that the Non-invasive Mechanical Ventilator (Bilevel Positive Airway Pressure [BiPAP], Continuous Positive Airway Pressure [CPAP]) data elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data elements consist of the principal Non-invasive Mechanical Ventilator data element and two sub-elements, BiPAP and CPAP. For more information on the Non-invasive Mechanical Ventilator (BiPAP, CPAP) data element, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/>

Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html.

BiPAP and CPAP are respiratory support devices that prevent the airways from closing by delivering slightly pressurized air via electronic cycling throughout the breathing cycle (Bilevel PAP, referred to as BiPAP) or through a mask continuously (Continuous PAP, referred to as CPAP). Assessment of non-invasive mechanical ventilation is important in care planning, as both CPAP and BiPAP are resource-intensive (although less so than invasive mechanical ventilation) and signify underlying medical conditions about the patient or resident who requires the use of this intervention. Particularly when used in settings of acute illness or progressive respiratory decline, additional staff (for example, respiratory therapists) are required to monitor and adjust the CPAP and BiPAP settings and the patient or resident may require more nursing resources.

Data elements that assess BiPAP and CPAP are currently included on the OASIS-C2 for HHAs (“Continuous/Bilevel positive airway pressure”), LCDS for the LTCH setting (“Non-invasive Ventilator (BiPAP, CPAP)”), and the MDS 3.0 for the SNF setting (“BiPAP/CPAP”). A data element that focused on CPAP was tested across the four PAC providers in the PAC-PRD study and found to be feasible for standardization. All of these data elements assess BiPAP or CPAP with a single check box, not separately.

Clinical and subject matter expert advisors working with our data element contractor agreed that the standardized assessment of Non-invasive Mechanical Ventilator (BiPAP, CPAP) data elements would be feasible for use in PAC, and assess an important treatment that would be clinically useful both within and across PAC provider types.

To solicit additional feedback on the form of the Non-invasive Mechanical Ventilator (BiPAP, CPAP) data elements best suited for standardization, we requested public comment on a single data element, BiPAP/CPAP, equivalent (but for labeling) to what is currently in use on the MDS, OASIS, and LCDS, from August 12 to September 12, 2016. Several commenters wrote in support of this data element, noting the feasibility of these items in PAC, and the relevance of these data elements for facilitating care coordination and supporting care transitions. In addition, there was support in the public comment responses for separating out BiPAP and CPAP as distinct sub-elements, as they are therapies used for different types of

patients and residents. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

A TEP convened by the data element contractor provided input on the proposed data elements. This TEP, held on January 5 and 6, 2017, opined that these data elements are appropriate for standardization because they would provide useful clinical information to inform care planning and care coordination. The TEP affirmed that assessment of these services and interventions is standard clinical practice. A full report of the TEP discussion is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing that the Non-invasive Mechanical Ventilator (BiPAP, CPAP) data elements with a principal data element and two sub-elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to expand the existing BiPAP/CPAP data element on the MDS, retaining and relabeling the BiPAP/CPAP data element to be Non-invasive Mechanical Ventilator (BiPAP, CPAP), and adding two sub-elements for BiPAP and CPAP. For the purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(g) Respiratory Treatment: Invasive Mechanical Ventilator

We are proposing that the Invasive Mechanical Ventilator data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of a single Invasive Mechanical Ventilator data element. For more information on the Invasive Mechanical

Ventilator data element, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

Invasive mechanical ventilation includes ventilators and respirators that ventilate the patient through a tube that extends via the oral airway into the pulmonary region or through a surgical opening directly into the trachea. Thus, assessment of invasive mechanical ventilation is important in care planning and risk mitigation. Ventilation in this manner is a resource-intensive therapy associated with life-threatening conditions without which the patient or resident would not survive. However, ventilator use has inherent risks requiring close monitoring. Failure to adequately care for the patient or resident who is ventilator dependent can lead to iatrogenic events such as death, pneumonia and sepsis. Mechanical ventilation further signifies the complexity of the patient's underlying medical and or surgical condition. Of note, invasive mechanical ventilation is associated with high daily and aggregate costs.⁶⁴

Data elements that capture invasive mechanical ventilation, but vary in their level of specificity, are currently in use in the MDS 3.0 ("Ventilator or respirator") and LCDS ("Invasive Mechanical Ventilator: Weaning" and "Invasive Mechanical Ventilator: Non-weaning"), and related data elements that assess invasive ventilator use and weaning status were tested in the PAC PRD ("Ventilator—Weaning" and "Ventilator—Non-Weaning") and found feasible for use in each of the four PAC settings.

Clinical and subject matter expert advisors working with our data element contractor agreed that assessing Invasive Mechanical Ventilator use is feasible in PAC, and would be clinically useful both within and across PAC providers.

To solicit additional feedback on the form of a data element on this topic that would be appropriate for standardization, data element that assess invasive ventilator use and weaning status that were tested in the PAC PRD ("Ventilator—Weaning" and

"Ventilator—Non-Weaning") were included in a call for public comment that was open from August 12 to September 12, 2016 because they were being considered for standardization. Several commenters wrote in support of these data elements, highlighting the importance of this information in supporting care coordination and care transitions. Some commenters expressed concern about the appropriateness for standardization, given the prevalence of ventilator weaning across PAC providers; the timing of administration; how weaning is defined; and how weaning status in particular relates to quality of care. These comments guided the decision to propose a single data element focused on current use of invasive mechanical ventilation only, and does not attempt to capture weaning status. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

A TEP convened by the data element contractor provided input on the proposed data elements. This TEP, held on January 5 and 6, 2017, opined that these data elements are appropriate for standardization because they would provide useful clinical information to inform care planning and care coordination. The TEP affirmed that assessment of these services and interventions is standard clinical practice. A full report of the TEP discussion is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing that the Invasive Mechanical Ventilator data element that assesses the use of an invasive mechanical ventilator, but does not assess weaning status, meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. As noted above, the Ventilator or Respirator data element, with the same definition as the Invasive Mechanical Ventilator data element, is already included on the MDS. For purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the

initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(h) Other Treatment: Intravenous (IV) Medications (Antibiotics, Anticoagulation, Other)

We are proposing that the IV Medications (Antibiotics, Anticoagulation, Other) data elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data elements consist of the principal IV Medications data element and three sub-elements, Antibiotics, Anticoagulation, and Other. For more information on the IV Medications (Antibiotics, Anticoagulation, Other) data element, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

IV medications are solutions of a specific medication (for example, antibiotics, anticoagulants) administered directly into the venous circulation via a syringe or intravenous catheter (tube). IV medications are administered via intravenous push (bolus), single, intermittent, or continuous infusion through a tube placed into the vein (for example, commonly referred to as central, midline, or peripheral ports). Further, IV medications are more resource intensive to administer than oral medications, and signify a higher patient complexity (and often higher severity of illness).

The clinical indications for each of the sub-elements of the IV Medication data element (Antibiotics, Anticoagulants, and Other) are very different. IV antibiotics are used for severe infections when: (1) The bioavailability of the oral form of the medication would be inadequate to kill the pathogen; (2) an oral form of the medication does not exist; or (3) the patient is unable to take the medication by mouth. IV anticoagulants refer to anti-clotting medications (that is, "blood thinners"), often used for the prevention and treatment of deep vein thrombosis and other thromboembolic complications. IV anticoagulants are

⁶⁴ Wunsch, H., Linde-Zwirble, W.T., Angus, D.C., Hartman, M.E., Milbrandt, E.B., & Kahn, J.M. (2010). "The epidemiology of mechanical ventilation use in the United States." *Critical Care Med* 38(10): 1947–1953.

commonly used in patients with limited mobility (either chronically or acutely, in the post-operative setting), who are at risk of deep vein thrombosis, or patients with certain cardiac arrhythmias such as atrial fibrillation. The indications, risks, and benefits of each of these classes of IV medications are distinct, making it important to assess each separately in PAC. Knowing whether or not patients are receiving IV medication and the type of medication provided by each PAC provider will improve quality of care.

The principal IV Medication data element is currently in use on the MDS 3.0 and there is a related data element in OASIS-C2 that collects information on Intravenous and Infusion Therapies. One sub-element of the proposed data elements, IV Anti-coagulants, and two other data elements related to IV therapy (IV Vasoactive Medications and IV Chemotherapy), were tested in the PAC PRD and found feasible for use in that the data collection aligned with usual work flow in each of the four PAC settings, demonstrating the feasibility of collecting IV medication information, including type of IV medication, through similar data elements in these settings.

Clinical and subject matter expert advisors working with our data element contractor agreed that standardized collection of information on medications, including IV medications, would be feasible in PAC, and assess an important treatment that would be clinically useful both within and across PAC provider types.

We solicited public comment on a related data element, Vasoactive Medications, from August 12 to September 12, 2016. While commenters supported this data element with one noting the importance of this data element in supporting care transitions, others criticized the need for collecting specifically on Vasoactive Medications, giving feedback that the data element was too narrowly focused. Additionally, comment received indicated that the clinical significance of vasoactive medications administration alone was not high enough in PAC to merit mandated assessment, noting that related and more useful information could be captured in an item that assessed all IV medication use.

Overall, public comment indicated the importance of including the additional check box data elements to distinguish particular classes of medications. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/>

IMPACT-Act-Downloads-and-Videos.html

A TEP convened by the data element contractor provided input on the proposed data elements. This TEP, held on January 5 and 6, 2017, opined that these data elements are appropriate for standardization because they would provide useful clinical information to inform care planning and care coordination. The TEP affirmed that assessment of these services and interventions is standard clinical practice. A full report of the TEP discussion is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing that the IV Medications (Antibiotics, Anticoagulation, Other) data elements with a principal data element and three sub-elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to expand the existing IV Medications data element in the MDS to include sub-elements for Antibiotics, Anticoagulation, and Other. For the purposes of the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(i) Other Treatment: Transfusions

We are proposing that the Transfusions data element meets the definition of standardized patient assessment data element for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of the single Transfusions data element. For more information on the Transfusions data element, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at [https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-](https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html)

Reporting-Program-Measures-and-Technical-Information.html

Transfusion refers to introducing blood, blood products, or other fluid into the circulatory system of a person. Blood transfusions are based on specific protocols, with multiple safety checks and monitoring required during and after the infusion in case of adverse events. Coordination with the provider's blood bank is necessary, as well as documentation by clinical staff to ensure compliance with regulatory requirements. In addition, the need for transfusions signifies underlying patient complexity that is likely to require care coordination and patient monitoring, and impacts planning for transitions of care, as transfusions are not performed by all PAC providers.

The proposed data element was selected from three existing assessment items on transfusions and related services, currently in use in the MDS 3.0 ("Transfusions") and OASIS-C2 ("Intravenous or Infusion Therapy"), and a data element tested in the PAC PRD ("Blood Transfusions"), that was found feasible for use in each of the four PAC settings. We chose to propose the MDS version because of its greater level of specificity over the OASIS-C2 data element. This selection was informed by expert advisors and reviewed and supported in the proposed form by the Standardized Patient Assessment Data TEP held by our data element contractor on January 5 and 6, 2017. A full report of the TEP discussion is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing that the Transfusions data element that is currently in use in the MDS meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. As noted above, the Transfusions data element is already included on the MDS. For purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(j) Other Treatment: Dialysis (Hemodialysis, Peritoneal dialysis)

We are proposing that the Dialysis (Hemodialysis, Peritoneal dialysis) data elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data elements consist of the principal Dialysis data element and two sub-elements, Hemodialysis and Peritoneal dialysis. For more information on the Dialysis (Hemodialysis, Peritoneal dialysis) data elements, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

Dialysis is a treatment primarily used to provide replacement for lost kidney function. Both forms of dialysis (hemodialysis and peritoneal dialysis) are resource intensive, not only during the actual dialysis process but before, during and following. Patients and residents who need and undergo dialysis procedures are at high risk for physiologic and hemodynamic instability from fluid shifts and electrolyte disturbances as well as infections that can lead to sepsis. Further, patients or residents receiving hemodialysis are often transported to a different facility, or at a minimum, to a different location in the same facility. Close monitoring for fluid shifts, blood pressure abnormalities, and other adverse effects is required prior to, during and following each dialysis session. Nursing staff typically perform peritoneal dialysis at the bedside, and as with hemodialysis, close monitoring is required.

The principal Dialysis data element is currently included on the MDS 3.0 and the LCDS v3.0 and assesses the overall use of dialysis. The sub-elements for Hemodialysis and Peritoneal dialysis were tested across the four PAC providers in the PAC PRD study, and found to be feasible for standardization. Clinical and subject matter expert advisors working with our data element contractor opined that the standardized assessment of dialysis is feasible in PAC, and that it assesses an important treatment that would be clinically useful both within and across PAC providers. As the results of expert and

public feedback, described below, we decided to propose a data element that includes both the principal Dialysis data element and the two sub-elements (hemodialysis and peritoneal dialysis).

The Hemodialysis data element, which was tested in the PAC PRD, was included in a call for public comment that was open from August 12 to September 12, 2016. Commenters supported the assessment of hemodialysis and recommended that the data element be expanded to include peritoneal dialysis. Several commenters supported the Hemodialysis data element, noting the relevance of this information for sharing across the care continuum to facilitate care coordination and care transitions, the potential for this data element to be used to improve quality, and the feasibility for use in PAC. In addition, we received comment that the item would be useful in improving patient and resident transitions of care. Several commenters also stated that peritoneal dialysis should be included in a standardized data element on dialysis and recommended collecting information on peritoneal dialysis in addition to hemodialysis. The rationale for including peritoneal dialysis from commenters included the fact that patients and residents receiving peritoneal dialysis will have different needs at post-acute discharge compared to those receiving hemodialysis or not having any dialysis. Based on these comments, the Hemodialysis data element was expanded to include a principal Dialysis data element and two sub-elements, hemodialysis and peritoneal dialysis; these are the same two data elements that were tested in the PAC PRD. This expanded version, Dialysis (Hemodialysis, Peritoneal dialysis), are the data elements being proposed. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

We note that the Dialysis (Hemodialysis, Peritoneal dialysis) data elements were also supported by the TEP that discussed candidate data elements for Special Services, Treatments, and Interventions during a meeting on January 5 and 6, 2017. A full report of the TEP discussion is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing that the Dialysis (Hemodialysis, Peritoneal dialysis) data elements with a principal data element and two sub-elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to expand the existing Dialysis data element in the MDS to include sub-elements for Hemodialysis and Peritoneal dialysis. For the purposes of the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(k) Other Treatment: Intravenous (IV) Access (Peripheral IV, Midline, Central line, Other)

We are proposing that the IV Access (Peripheral IV, Midline, Central line, Other) data elements meet the definition of standardized patient assessment data element for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data elements consist of the principal IV Access data element and four sub-elements, Peripheral IV, Midline, Central line, and Other. For more information on the IV Access data element, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

Patients or residents with central lines, including those peripherally inserted or who have subcutaneous central line “port” access, always require vigilant nursing care to keep patency of the lines and ensure that such invasive lines remain free from any potentially life-threatening events such as infection, air embolism, or bleeding from an open lumen. Clinically complex patients and residents are likely to be receiving medications or nutrition intravenously. The sub-elements included in the IV Access data elements distinguish between peripheral access and different types of central access.

The rationale for distinguishing between a peripheral IV and central IV access is that central lines confer higher risks associated with life-threatening events such as pulmonary embolism, infection, and bleeding.

The proposed IV Access (Peripheral IV, Midline, Central line, Other) data elements are not currently included on any of the mandated PAC assessment instruments. However, related data elements (for example, IV Medication in MDS 3.0 for SNF, Intravenous or infusion therapy in OASIS-C2 for HHAs) currently assess types of IV access. Several related data elements that describe types of IV access (for example, Central Line Management, IV Vasoactive Medications) were tested across the four PAC providers in the PAC PRD study, and found to be feasible for standardization.

Clinical and subject matter expert advisors working with our data element contractor agreed that assessing type of IV access would be feasible for use in PAC and that it assesses an important treatment that would be clinically useful both within and across PAC provider types.

We requested public comment on one of the PAC PRD data elements, Central Line Management, from August 12 to September 12, 2016. A central line is one type of IV access. Commenters supported the assessment of central line management and recommended that the data element be broadened to also include other types of IV access. Several commenters supported the data element, noting feasibility and importance for facilitating care coordination and care transitions. However, a few commenters recommended that the definition of this data element be broadened to include peripherally inserted central catheters (“PICC lines”) and midline IVs. Based on public comment feedback and in consultation with clinical and subject matters experts, we expanded the Central Line Management data element to include more types of IV access (Peripheral IV, Midline, Central line, Other). This expanded version, IV Access (Peripheral IV, Midline, Central line, Other), are the data elements being proposed. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

We note that the IV Access (Peripheral IV, Midline, Central line, Other) data elements were supported by the TEP that discussed candidate data elements for Special Services,

Treatments, and Interventions during a meeting on January 5 and 6, 2017. A full report of the TEP discussion is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing that the IV access (Peripheral IV, Midline, Central line, Other) data elements with a principal data element and four sub-elements meet the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. We are proposing to add the IV Access (Peripheral IV, Midline, Central line, Other) data elements to the MDS, and that, for the purposes of the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(I) Nutritional Approach: Parenteral/IV Feeding

We are proposing that the Parenteral/IV Feeding data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of the single Parenteral/IV Feeding data element. For more information on the Parenteral/IV Feeding data element, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

Parenteral/IV Feeding refers to a patient or resident being fed intravenously using an infusion pump, bypassing the usual process of eating and digestion. The need for IV/parenteral feeding indicates a clinical complexity that prevents the patient or resident from meeting his/her nutritional needs enterally, and is more resource intensive than other forms of nutrition, as it often requires monitoring

of blood chemistries, and maintenance of a central line. Therefore, assessing a patient or resident’s need for parenteral feeding is important for care planning and resource use. In addition to the risks associated with central and peripheral intravenous access, total parenteral nutrition is associated with significant risks such as embolism and sepsis.

The Parenteral/IV Feeding data element is currently in use in the MDS 3.0, and equivalent or related data elements are in use in the LCDS, IRF-PAI, and the OASIS-C2. An equivalent data element was tested in the PAC PRD (“Total Parenteral Nutrition”) and found feasible for use in each of the four PAC settings, demonstrating the feasibility of collecting information about this nutritional service in these settings.

Total Parenteral Nutrition (an item with the same meaning as the proposed data element, but with the label used in the PAC PRD) was included in a call for public comment that was open from August 12 to September 12, 2016.

Several commenters supported this data element, noting its relevance to facilitating care coordination and supporting care transitions. After the public comment period, the Total Parenteral Nutrition data element was re-named Parenteral/IV Feeding, to be consistent with how this data element is referred to in the MDS. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

A TEP convened by the data element contractor provided input on the proposed data elements. This TEP, held on January 5 and 6, 2017, opined that these data elements are appropriate for standardization because they would provide useful clinical information to inform care planning and care coordination. The TEP affirmed that assessment of these services and interventions is standard clinical practice. A full report of the TEP discussion is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>. Therefore, we are proposing that the Parenteral/IV Feeding data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. As noted above, the Parenteral/IV Feeding

data element is already included on the MDS. For purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(m) Nutritional Approach: Feeding Tube

We are proposing that the Feeding Tube data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of the single Feeding Tube data element. For more information on the Feeding Tube data element, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

The majority of patients admitted to acute care hospitals experience deterioration of their nutritional status during their hospital stay, making assessment of nutritional status and method of feeding if unable to eat orally very important in PAC. A feeding tube can be inserted through the nose or the skin on the abdomen to deliver liquid nutrition into the stomach or small intestine. Feeding tubes are resource intensive and are therefore important to assess for care planning and resource use. Patients with severe malnutrition are at higher risk for a variety of complications.⁶⁵ In PAC settings, there are a variety of reasons that patients and residents may not be able to eat orally (including clinical or cognitive status).

The Feeding Tube data element is currently included in the MDS 3.0 for SNFs, and in the OASIS-C2 for HHAs, where it is labeled Enteral Nutrition. A related data element, collected in the IRF-PAI for IRFs (Tube/Parenteral Feeding), assesses use of both feeding

tubes and parenteral nutrition. The testing of similar nutrition-focused data elements in the PAC PRD, and the current assessment of feeding tubes and related nutritional services and devices, demonstrates the feasibility of collecting information about this nutritional service in these settings.

Clinical and subject matter expert advisors working with our data element contractor opined that the Feeding Tube data element is feasible for use in PAC, and supported its importance and clinical usefulness for patients in PAC settings, due to the increased level of nursing care and patient monitoring required for patients who received enteral nutrition with this device.

We solicited additional feedback on an Enteral Nutrition data element (an item with the same meaning as the proposed data element, but with the label used in the OASIS) in a call for public comment that was open from August 12 to September 12, 2016. Several commenters supported the data element, noting the importance of assessing enteral nutrition status for facilitating care coordination and care transitions. After the public comment period, the Enteral Nutrition data element used in public comment was renamed Feeding Tube, indicating the presence of an assistive device. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

We note that the Feeding Tube data element was also supported by the TEP that discussed candidate data elements for Special Services, Treatments, and Interventions during a meeting on January 5 and 6, 2017. A full report of the TEP discussion is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>. Therefore, we are proposing that the Feeding Tube data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. As noted above, the Feeding Tube data element is already included on the MDS. For purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018.

Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(n) Nutritional Approach: Mechanically Altered Diet

We are proposing that the Mechanically Altered Diet data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of the single Mechanically Altered Diet data element. For more information on the Mechanically Altered Diet data element, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

The Mechanically Altered Diet data element refers to food that has been altered to make it easier for the patient or resident to chew and swallow, and this type of diet is used for patients and residents who have difficulty performing these functions. Patients with severe malnutrition are at higher risk for a variety of complications.⁶⁶ In PAC settings, there are a variety of reasons that patients and residents may have impairments related to oral feedings, including clinical or cognitive status. The provision of a mechanically altered diet may be resource intensive, and can signal difficulties associated with swallowing/eating safety, including dysphagia. In other cases, it signifies the type of altered food source, such as ground or puree, that will enable the safe and thorough ingestion of nutritional substances and ensure safe and adequate delivery of nourishment to the patient. Often, patients on mechanically altered diets also require additional nursing supports such as individual feeding, or direct observation, to ensure the safe consumption of the food product. Assessing whether a patient or resident requires a mechanically altered diet is

⁶⁵ Dempsey, D.T., Mullen, J.L., & Buzby, G.P. (1988). "The link between nutritional status and clinical outcome: can nutritional intervention modify it?" *Am J of Clinical Nutrition* 47(2): 352-356.

⁶⁶ Dempsey, D.T., Mullen, J.L., & Buzby, G.P. (1988). "The link between nutritional status and clinical outcome: can nutritional intervention modify it?" *Am J of Clinical Nutrition* 47(2): 352-356.

therefore important for care planning and resource identification.

The proposed data element for a mechanically altered diet is currently included on the MDS 3.0 for SNFs. A related data element for modified food consistency/supervision is currently included on the IRF-PAI for IRFs. A related data element is included in the OASIS-C2 for HHAs that collects information about independent eating that requires “a liquid, pureed or ground meat diet.” The testing of similar nutrition-focused data elements in the PAC PRD, and the current assessment of various nutritional services across the four PAC settings, demonstrates the feasibility of collecting information about this nutritional service in these settings.

Clinical and subject matter expert advisors working with our data element contractor agreed that the proposed Mechanically Altered Diet data element is feasible for use in PAC, and it assesses an important treatment that would be clinically useful both within and across PAC settings. Expert input on the Mechanically Altered Diet data element highlighted its importance and clinical usefulness for patients in PAC settings, due to the increased monitoring and resource use required for patients on special diets. We note that the Mechanically Altered Diet data element was also supported by the TEP that discussed candidate data elements for Special Services, Treatments, and Interventions during a meeting on January 5 and 6, 2017. A full report of the TEP discussion is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing that the Mechanically Altered Diet data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. As noted above, the Mechanically Altered Diet data element is already included on the MDS. For purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(o) Nutritional Approach: Therapeutic Diet

We are proposing that the Therapeutic Diet data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. The proposed data element consists of the single Therapeutic Diet data element. For more information on the Therapeutic Diet data element, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>. Therapeutic Diet refers to meals planned to increase, decrease, or eliminate specific foods or nutrients in a patient or resident’s diet, such as a low-salt diet, for the purpose of treating a medical condition. The use of therapeutic diets among patients in PAC provides insight on the clinical complexity of these patients and their multiple comorbidities. Therapeutic diets are less resource intensive from the bedside nursing perspective, but do signify one or more underlying clinical conditions that preclude the patient from eating a regular diet. The communication among PAC providers about whether a patient is receiving a particular therapeutic diet is critical to ensure safe transitions of care.

The Therapeutic Diet data element is currently in use in the MDS 3.0. The testing of similar nutrition-focused data elements in the PAC PRD, and the current assessment of various nutritional services across the four PAC settings, demonstrates the feasibility of collecting information about this nutritional service in these settings.

Clinical and subject matter expert advisors working with our data element contractor supported the importance and clinical usefulness of the proposed Therapeutic Diet data element for patients in PAC settings, due to the increased monitoring and resource use required for patients on special diets, and agreed that it is feasible for use in PAC and that it assesses an important treatment that would be clinically useful both within and across PAC settings. We note that the Therapeutic Diet data element was also supported by the TEP that discussed candidate data elements for Special Services,

Treatments, and Interventions during a meeting on January 5 and 6, 2017.

Therefore, we are proposing that the Therapeutic Diet data element meets the definition of standardized patient assessment data for special services, treatments, and interventions under section 1899B(b)(1)(B)(iii) of the Act. As noted above, the Therapeutic Diet data element is already included on the MDS. For purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay and SNF discharges at the end of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting.

We are inviting public comment on these proposals.

(4) Medical Condition and Comorbidity Data

We are proposing that the data elements needed to calculate the current measure, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678), and the proposed measure, Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, meet the definition of standardized patient assessment data for medical conditions and co-morbidities under section 1899B(b)(1)(B)(iv) of the Act, and that the successful reporting of that data under section 1888(e)(6)(B)(i)(II) of the Act would also satisfy the requirement to report standardized patient assessment data under section 1888(e)(6)(B)(i)(III) of the Act.

“Medical conditions and comorbidities” and the conditions addressed in the standardized data elements used in the calculation and risk adjustment of these measures, that is, the presence of pressure ulcers, diabetes, incontinence, peripheral vascular disease or peripheral arterial disease, mobility, as well as low body mass index, are all health-related conditions that indicate medical complexity that can be indicative of underlying disease severity and other comorbidities.

Specifically, the data elements used in the measure are important for care planning and provide information pertaining to medical complexity. Pressure ulcers are serious wounds representing poor outcomes, and can result in sepsis and death. Assessing skin condition, care planning for pressure ulcer prevention and healing, and informing providers about their

presence in patient transitions of care is a customary and best practice. Venous and arterial disease and diabetes are associated with low blood flow which may increase the risk of tissue damage. These diseases are indicators of factors that may place individuals at risk for pressure ulcer development and are therefore important for care planning. Low BMI, which may be an indicator of underlying disease severity, may be associated with loss of fat and muscle, resulting in potential risk for pressure ulcers. Bowel incontinence and the possible maceration to the skin associated, can lead to higher risk for pressure ulcers. In addition, the bacteria associated with bowel incontinence can complicate current wounds and cause local infection. Mobility is an indicator of impairment or reduction in mobility and movement which is a major risk factor for the development of pressure ulcers. Taken separately and together, these data elements are important for care planning, transitions in services and identifying medical complexities.

In sections VI.B.7.a and VI.B.10.a, we discuss our rationale for proposing that the data elements used in the measures meet the definition of standardized patient assessment data. In summary, we believe that the collection of such assessment data is important for multiple reasons, including clinical decision support, care planning, and quality improvement, and that the data elements assessing pressure ulcers and the data elements used to risk adjust showed good reliability. We solicited stakeholder feedback on the quality measure, and the data elements from which it is derived, by means of a public comment period and TEPs, as described in section V.B.7.a of this proposed rule. We are inviting public comment on this proposal.

(5) Impairment Data

Hearing and vision impairments are conditions that, if unaddressed, affect activities of daily living, communication, physical functioning, rehabilitation outcomes, and overall quality of life. Sensory limitations can lead to confusion in new settings, increase isolation, contribute to mood disorders, and impede accurate assessment of other medical conditions. Failure to appropriately assess, accommodate, and treat these conditions increases the likelihood that patients and residents will require more intensive and prolonged treatment. Onset of these conditions can be gradual, so individualized assessment with accurate screening tools and follow-up evaluations are essential to determining which patients and

residents need hearing- or vision-specific medical attention or assistive devices, and accommodations, including auxiliary aids and/or services, in order to effectively participate in the rehabilitation environment and treatment, and to ensure that person-directed care plans are developed to accommodate a patient's needs. Accurate diagnosis and management of hearing or vision impairment would likely improve rehabilitation outcomes and care transitions, including transition from institutional-based care to the community. Accurate assessment of hearing and vision impairment would be expected to lead to appropriate treatment, accommodations, including the provision of auxiliary aids and services during the stay, and ensure that patients and residents continue to have their vision and hearing needs met when they leave the facility.

Accurate individualized assessment, treatment, and accommodation of hearing and vision impairments of patients and residents in PAC would be expected to have a positive impact on the National Quality Strategy's domains of patient and family engagement, patient safety, care coordination, clinical process/effectiveness, and efficient use of health care resources. For example, standardized assessment of hearing and vision impairments used in PAC will support ensuring patient and resident safety (for example, risk of falls), identifying accommodations needed during the stay, and appropriate support needs at the time of discharge or transfer. Standardized assessment of these data elements will enable or support clinical decision-making and early clinical intervention; person-centered, high quality care (for example, facilitating better care continuity and coordination); better data exchange and interoperability between settings; and longitudinal outcome analysis. Hence, reliable data elements assessing hearing and vision impairments are needed to initiate a management program that can optimize a patient or resident's prognosis and reduce the possibility of adverse events.

(a) Hearing

We are proposing that the Hearing data element meets the definition of standardized patient assessment data for impairments under section 1899B(b)(1)(B)(v) of the Act. The proposed data element consists of the single Hearing data element. This data element assesses level of hearing impairment, and consists of one question. For more information on the Hearing data element, we refer readers to the document titled, *Proposed*

Specifications for SNF QRP Quality Measures and Standardized Data Elements, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

Accurate assessment of hearing impairment is important in the PAC setting for care planning and resource use. Hearing impairment has been associated with lower quality of life, including poorer physical, mental, and social functioning, and emotional health.^{67,68} Treatment and accommodation of hearing impairment led to improved health outcomes, including but not limited to quality of life.⁶⁹ For example, hearing loss in elderly individuals has been associated with depression and cognitive impairment,^{70,71,72} higher rates of incident cognitive impairment and cognitive decline,⁷³ and less time in occupational therapy.⁷⁴ Accurate assessment of hearing impairment is important in the PAC setting for care planning and defining resource use.

The proposed data element was selected from two forms of the Hearing data element based on expert and stakeholder feedback. We considered the two forms of the Hearing data element, one of which is currently in use in the MDS 3.0 (Hearing) and another data element with different

⁶⁷ Dalton DS, Cruickshanks KJ, Klein BE, Klein R, Wiley TL, Nondahl DM. The impact of hearing loss on quality of life in older adults. *Gerontologist*. 2003;43(5):661-668.

⁶⁸ Hawkins K, Bottone FG, Jr., Ozminkowski RJ, et al. The prevalence of hearing impairment and its burden on the quality of life among adults with Medicare Supplement Insurance. *Qual Life Res*. 2012;21(7):1135-1147.

⁶⁹ Horn KL, McMahon NB, McMahon DC, Lewis JS, Barker M, Gherini S. Functional use of the Nucleus 22-channel cochlear implant in the elderly. *The Laryngoscope*. 1991;101(3):284-288.

⁷⁰ Sprinzi GM, Riechelmann H. Current trends in treating hearing loss in elderly people: A review of the technology and treatment options—a mini-review. *Gerontology*. 2010;56(3):351-358.

⁷¹ Lin FR, Thorpe R, Gordon-Salant S, Ferrucci L. Hearing Loss Prevalence and Risk Factors Among Older Adults in the United States. *The Journals of Gerontology Series A: Biological Sciences and Medical Sciences*. 2011;66A(5):582-590.

⁷² Hawkins K, Bottone FG, Jr., Ozminkowski RJ, et al. The prevalence of hearing impairment and its burden on the quality of life among adults with Medicare Supplement Insurance. *Qual Life Res*. 2012;21(7):1135-1147.

⁷³ Lin FR, Metter EJ, O'Brien RJ, Resnick SM, Zonderman AB, Ferrucci L. Hearing Loss and Incident Dementia. *Arch Neurol*. 2011;68(2):214-220.

⁷⁴ Cimarolli VR, Jung S. Intensity of Occupational Therapy Utilization in Nursing Home Residents: The Role of Sensory Impairments. *J Am Med Dir Assoc*. 2016;17(10):939-942.

wording and fewer response option categories that is currently in use in the OASIS-C2 (Ability to Hear). Ability to Hear was also tested in the PAC PRD and found to have substantial agreement for inter-rater reliability across PAC settings (kappa of 0.78).⁷⁵ It was also found to be clinically relevant, meaningful for care planning, and feasible for use in each of the four PAC settings.

Several data elements that assess hearing impairment were presented to the Standardized Patient Assessment Data TEP held by our data element contractor. The TEP did not reach consensus on the ideal number of response categories or phrasing of response options, which are the primary differences between the current MDS (Hearing) and OASIS (Ability to Hear) items. The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data Technical Expert Panel Summary Report is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

The PAC PRD form of the data element (Ability to Hear) was included in a call for public comment that was open from August 12 to September 12, 2016. This data element includes three response choices, in contrast to the Hearing data element (in use in the MDS 3.0 and being proposed for standardization), which includes four response choices. Several commenters supported the use of the Ability to Hear data element, although some commenters raised concerns that the three-level response choice was not compatible with the current, four-level response used in the MDS, and favored the use of the MDS version of the Hearing data element. In addition, we received comments stating that standardized assessment related to hearing impairment has the ability to improve quality of care if information on hearing is included in medical records of patients and residents, which would improve care coordination and facilitate the development of patient- and resident-centered treatment plans. Based on comments that the three-level response choice (Ability to Hear) was not congruent with the current, four-level response used in the MDS (Hearing), and support for the use of the

MDS version of the Hearing data element received in the public comment, we are proposing the Hearing data element. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing the Hearing data element currently in use on the MDS. For purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting. The Hearing data element would be assessed at admission at the start of the Medicare Part A stay only due to the relatively stable nature of hearing impairment, making it unlikely that a patient's score on this assessment would change between the start and end of the PAC stay. Assessment at discharge at the end of the Medicare Part A stay would introduce additional burden without improving the quality or usefulness of the data, and is deemed unnecessary.

We are inviting public comment on these proposals.

(b) Vision

We are proposing that the Vision data element meets the definition of standardized patient assessment data element for impairments under section 1899B(b)(1)(B)(v) of the Act. The proposed data element consists of the single Vision (Ability To See in Adequate Light) data element that consists of one question with five response categories. For more information on the Vision data element, we refer readers to the document titled, *Proposed Specifications for SNF QRP Quality Measures and Standardized Data Elements*, available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program-SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

Evaluation of an individual's ability to see is important for assessing for risks such as falls and provides opportunities for improvement through treatment and the provision of accommodations, including auxiliary aids and services, which can safeguard patients and

improve their overall quality of life. Further, vision impairment is often a treatable risk factor associated with adverse events and poor quality of life. For example, individuals with visual impairment are more likely to experience falls and hip fracture, have less mobility, and report depressive symptoms.^{76 77 78 79 80 81 82}

Individualized initial screening can lead to life-improving interventions such as accommodations, including the provision of auxiliary aids and services, during the stay and/or treatments that can improve vision and prevent or slow further vision loss. For patients with some types of visual impairment, use of glasses and contact lenses can be effective in restoring vision.⁸³ Other conditions, including glaucoma⁸⁴ and age-related macular degeneration,^{85 86} have responded well to treatment. In addition, vision impairment is often a treatable risk factor associated with adverse events which can be prevented and accommodated during the stay. Accurate assessment of vision

⁷⁶ Colon-Emeric CS, Biggs DP, Schenck AP, Lyles KW. Risk factors for hip fracture in skilled nursing facilities: who should be evaluated? *Osteoporos Int*. 2003;14(6):484–489.

⁷⁷ Freeman EE, Munoz B, Rubin G, West SK. Visual field loss increases the risk of falls in older adults: the Salisbury eye evaluation. *Invest Ophthalmol Vis Sci*. 2007;48(10):4445–4450.

⁷⁸ Keepnews D, Capitman JA, Rosati RJ. Measuring patient-level clinical outcomes of home health care. *J Nurs Scholarsh*. 2004;36(1):79–85.

⁷⁹ Nguyen HT, Black SA, Ray LA, Espino DV, Markides KS. Predictors of decline in MMSE scores among older Mexican Americans. *J Gerontol A Biol Sci Med Sci*. 2002;57(3):M181–185.

⁸⁰ Prager AJ, Liebmann JM, Cioffi GA, Blumberg DM. Self-reported Function, Health Resource Use, and Total Health Care Costs Among Medicare Beneficiaries With Glaucoma. *JAMA ophthalmology*. 2016;134(4):357–365.

⁸¹ Rovner BW, Ganguli M. Depression and disability associated with impaired vision: the MoVies Project. *J Am Geriatr Soc*. 1998;46(5):617–619.

⁸² Tinetti ME, Ginter SF. The nursing home life-space diameter. A measure of extent and frequency of mobility among nursing home residents. *J Am Geriatr Soc*. 1990;38(12):1311–1315.

⁸³ Rein DB, Wittenborn JS, Zhang X, et al. The Cost-effectiveness of Welcome to Medicare Visual Acuity Screening and a Possible Alternative Welcome to Medicare Eye Evaluation Among Persons Without Diagnosed Diabetes Mellitus. *Archives of ophthalmology*. 2012;130(5):607–614.

⁸⁴ Leske M, Heijl A, Hussein M, et al. Factors for glaucoma progression and the effect of treatment: The early manifest glaucoma trial. *Archives of Ophthalmology*. 2003;121(1):48–56.

⁸⁵ Age-Related Eye Disease Study Research G. A randomized, placebo-controlled, clinical trial of high-dose supplementation with vitamins c and e, beta carotene, and zinc for age-related macular degeneration and vision loss: AREDS report no. 8. *Archives of Ophthalmology*. 2001;119(10):1417–1436.

⁸⁶ Takeda AL, Colquitt J, Clegg AJ, Jones J. Pegaptanib and ranibizumab for neovascular age-related macular degeneration: a systematic review. *The British Journal of Ophthalmology*. 2007;91(9):1177–1182.

⁷⁵ Gage B, Smith L, Ross J, et al. (2012). The Development and Testing of the Continuity Assessment Record and Evaluation (CARE) Item Set (Final Report on Reliability Testing, Volume 2 of 3). Research Triangle Park, NC: RTI International.

impairment is important in the PAC setting for care planning and defining resource use.

The Vision data element that we are proposing for standardization was tested as part of the development of the MDS 3.0 and is currently in use in that assessment. Similar data elements, but with different wording and fewer response option categories, are in use in the OASIS-C2 and were tested in post-acute providers in the PAC PRD and found to be clinically relevant, meaningful for care planning, reliable (kappa of 0.74),⁸⁷ and feasible for use in each of the four PAC settings.

Several data elements that assess vision were presented to the TEP held by our data element contractor. The TEP did not reach consensus on the ideal number of response categories or phrasing of response options, which are the primary differences between the current MDS and OASIS items; some members preferring more granular response options (for example, mild impairment and moderate impairment) while others were comfortable with collapsed response options (that is, mild/moderate impairment). The Development and Maintenance of Post-Acute Care Cross-Setting Standardized Patient Assessment Data Technical Expert Panel Summary Report is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

We solicited public comment from August 12 to September 12, 2016, on the Ability to See in Adequate Light data element (version tested in the PAC PRD with three response categories). The data element in public comment differed from the proposed data element, but the comments supported the assessment of vision in PAC settings and the useful information a vision data element would provide. The commenters stated that the Ability to See item would provide important information that would facilitate care coordination and care planning, and consequently improve the quality of care. Other commenters suggested it would be helpful as an indicator of resource use and noted that the item would provide useful information about the abilities of patients and residents to care for themselves. Additional commenters noted that the item could feasibly be implemented across PAC

providers and that its kappa scores from the PAC PRD support its validity. Some commenters noted a preference for MDS version of the Vision data element over the form put forward in public comment, citing the widespread use of this data element. A full report of the comments is available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html>.

Therefore, we are proposing the Vision data element currently in use on the MDS. For purposes of reporting for the FY 2020 SNF QRP, SNFs would be required to report these data for SNF admissions at the start of the Medicare Part A stay that occur between October 1, 2018 and December 31, 2018. Following the initial reporting year for the FY 2020 SNF QRP, subsequent years for the SNF QRP would be based on a full calendar year of such data reporting. The Vision data element would be assessed at admission at the start of the Medicare Part A stay only due to the relatively stable nature of vision impairment, making it unlikely that a patient or resident's score on this assessment would change between the start and end of the PAC stay. Assessment at discharge at the end of the Medicare Part A stay would introduce additional burden without improving the quality or usefulness of the data, and is deemed unnecessary.

We are inviting public comment on these proposals.

11. Proposals Relating to the Form, Manner, and Timing of Data Submission Under the SNF QRP

a. Proposed Start Date for Standardized Resident Assessment Data Reporting by New SNFs

In the FY 2016 SNF PPS final rule (80 FR 46455), we adopted timing for new SNFs to begin reporting quality data under the SNF QRP beginning with the FY 2018 SNF QRP. We are proposing in this proposed rule that new SNFs will be required to begin reporting standardized patient assessment data on the same schedule.

We are inviting public comment on this proposal.

b. Proposed Mechanism for Reporting Standardized Resident Assessment Data Beginning With the FY 2019 SNF QRP

Under our current policy, SNFs report data by completing applicable sections of the MDS, and submitting the MDS-RAI to CMS through the Quality Improvement and Evaluation System

(QIES), Assessment Submission and Processing System (ASAP) system. For more information on SNF QRP reporting through the QIES ASAP system, refer to the "Related Links" section at the bottom of https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/index.html?redirect=/NursingHomeQualityInits/30_NHQIMDS30TechnicalInformation.asp#TopOfPage. In addition to the data currently submitted on quality measures as previously finalized and discussed in section VI.B.6. of this proposed rule, we are proposing that SNFs would be required to begin submitting the proposed standardized resident assessment data for SNF Medicare resident admissions and discharges that occur on or after October 1, 2018 using the MDS, as described here. Details on the modifications and assessment collection for the MDS for the proposed standardized assessment data are available at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Measures-and-Technical-Information.html>.

We are inviting public comments on this proposal.

c. Proposed Schedule for Reporting Standardized Resident Assessment Data Beginning With the FY 2019 SNF QRP

Starting with the FY 2019 SNF QRP, we are proposing to apply our current schedule for the reporting of measure data to the reporting of standardized resident assessment data. Under that policy, except for the first program year for which a measure is adopted, SNFs must report data on measures for SNF Medicare admissions that occur during the 12-month calendar year (CY) period that apply to the program year. For the first program year for which a measure is adopted, SNFs are only required to report data on SNF Medicare admissions that occur on or after October 1 and discharged from the SNF up to and including December 31 of the calendar year that applies to that program year. For example, for the FY 2018 SNF QRP, data on measures adopted for earlier program years must be reported for all CY 2016 SNF Medicare admissions that occur on or after October 1, 2016 and discharges that occur on or before December 31, 2016. However, data on new measures adopted for the first time for the FY 2018 SNF QRP program year must only be reported for SNF Medicare

⁸⁷ Gage B., Smith L., Ross J. et al. (2012). The Development and Testing of the Continuity Assessment Record and Evaluation (CARE) Item Set (Final Report on Reliability Testing, Volume 2 of 3). Research Triangle Park, NC: RTI International.

admissions and discharges that occur during the last calendar quarter of 2016. Tables 20 and 21 illustrate this policy using the FY 2019 and FY 2020 SNF QRP as examples.

TABLE 20—SUMMARY ILLUSTRATION OF INITIAL REPORTING CYCLE FOR NEWLY ADOPTED MEASURE AND STANDARDIZED PATIENT ASSESSMENT DATA REPORTING USING CY Q4 DATA *

Proposed data collection/submission quarterly reporting period *	Proposed data submission quarterly deadlines beginning with FY 2019 SNF QRP * ^
Q4: CY 2017 10/1/2017–12/31/2017	CY 2017 Q4 Deadline: May 15, 2018.

* We note that submission of the MDS must also adhere to the SNF PPS deadlines.

^ The term “FY 2019 SNF QRP” means the fiscal year for which the SNF QRP requirements applicable to that fiscal year must be met in order for a SNF to receive the full market basket percentage when calculating the payment rates applicable to it for that fiscal year.

TABLE 21—SUMMARY ILLUSTRATION OF CALENDAR YEAR QUARTERLY REPORTING CYCLES FOR MEASURE AND STANDARDIZED PATIENT ASSESSMENT DATA REPORTING *

Proposed data collection/submission quarterly reporting period *	Proposed data submission quarterly deadlines beginning with FY 2020 SNF QRP * ^
Q1: CY 2018 1/1/2018–3/31/2018	CY 2018 Q1 Deadline: August 15, 2018.
Q2: CY 2018 4/1/2018–6/30/2018	CY 2018 Q2 Deadline: November 15, 2018.
Q3: CY 2018 7/1/2018–9/30/2018	CY 2018 Q3 Deadline: February 15, 2019.
Q4: CY 2018 10/1/2018–12/31/2018	CY 2018 Q4 Deadline: May 15, 2019.

* We note that submission of the MDS must also adhere to the SNF PPS deadlines.

^ The term “FY 2020 SNF QRP” means the fiscal year for which the SNF QRP requirements applicable to that fiscal year must be met in order for a SNF to receive the full market basket percentage when calculating the payment rates applicable to it for that fiscal year.

We are inviting comment on our proposal to extend our current policy governing the schedule for reporting the quality measure data to the reporting of standardized resident assessment data beginning with the FY 2019 SNF QRP.

d. Proposed Schedule for Reporting the Proposed Quality Measures Beginning With the FY 2020 SNF QRP

As discussed in section V.B.7. of this proposed rule, we are proposing to adopt five quality measures beginning with the FY 2020 SNF QRP: Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury, Application of IRF Functional Outcome Measure: Change in Self-Care for Medical Rehabilitation Patients (NQF #2633), Application of IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634), Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635), and Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636). We are proposing that SNFs would report data on these measures using the MDS that is submitted through the QIES ASAP system. For the FY 2020 SNF QRP, SNFs would be required to report these data for admissions as well discharges that occur between October 1, 2018 and December 31, 2018. More information on SNF reporting using the QIES ASAP system is located at <https://www.cms.gov/Medicare/Quality->

Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/index.html?redirect=/NursingHomeQualityInits/30_NHQIMDS30TechnicalInformation.asp#TopOfPage.

Starting in CY 2019, SNFs would be required to submit data for the entire calendar year beginning with the FY 2021 SNF QRP.

We are inviting public comment on this proposal.

e. Input Sought on Data Reporting Related to Assessment Based Measures

Through various means of public input, including that through previous rules, public comment on measures and the Measures Application Partnership, we received input suggesting that we expand the quality measures to include all residents and patients regardless of payer status so as to ensure representation of the quality of the services provided on the population as a whole, rather than a subset limited to Medicare. While we appreciate that many SNF residents are also Medicare beneficiaries, we agree that collecting quality data on all residents in the SNF setting supports our mission to ensure quality care for all individuals, including Medicare beneficiaries. We also agree that collecting data on all patients provides the most robust and accurate reflection of quality in the SNF setting. Accurate representation of quality provided in SNFs is best conveyed using data on all SNF residents, regardless of payer. We also

appreciate that collecting quality data on all SNF residents regardless of payer source may create additional burden, however, we also note that the effort to separate out SNF residents covered by other non-FFS Medicare payers could have clinical and work flow implications with an associated burden, and we further appreciate that it is common practice for SNFs to collect MDS data on all residents regardless of payer source. Additionally, we note that data collected through MDS for Medicare beneficiaries should match that beneficiary’s claims data in certain key respects (for example, diagnoses and procedures); this makes it easier for us to evaluate the accuracy of reporting in the MDS, such as by comparing diagnoses at hospital discharge to diagnoses at the follow-on SNF admission. However, we would not have access to such claims data for non-Medicare beneficiaries. Thus, we are seeking input on whether we should require quality data reporting on all SNF residents, regardless of payer, where feasible—noting that Part A claims data are limited to only Medicare beneficiaries.

We are seeking comments on this topic.

12. Proposal To Apply the SNF QRP Data Completion Thresholds to the Submission of Standardized Resident Assessment Data Beginning With the FY 2019 SNF QRP

We have gotten questions surrounding the data completion policy we adopted

beginning with the FY 2018 program year, in particular for how that policy applies to patients who reside in the SNF for part of an applicable period (for example, a patient who is admitted to a SNF during one reporting period but discharged in another, or a patient who is assessed upon admission using one version of the MDS but assessed at discharge using another version. We previously finalized that SNFs must report all of the data necessary to calculate the measures that apply to that program year on at least 80 percent of the MDS assessments that they submit (80 FR 46458). We also stated, in response to a comment, that we would consider data to have been satisfactorily submitted for a program year if the SNF reported all of the data necessary to calculate the measures if the data actually can be used for purposes of such calculations (as opposed to, for example, the use of a dash [-]).

Some stakeholders have interpreted our requirement that data elements be necessary to calculate the measures to mean that if a patient is assessed, for example, using one version of the MDS at admission and another version of the MDS at discharge, the two assessments are included in the pool of assessments used to determine data completion only if the data elements at admission and discharge can be used to calculate the measures. Our intention, however, was not to exclude assessments on this basis. Rather, our intention was solely to clarify that for purposes of determining whether a SNF has met the data completion threshold, we would only look at the completeness of the data elements in the MDS for which reporting is required under the SNF QRP.

To clarify our intended policy, we are proposing that the for purposes of determining whether a SNF has met the data completion threshold, we will consider all whether the SNF has reported all of the required data elements applicable to the program year on at least 80 percent of the MDS assessments that they submit for that program year. For example, if a resident is admitted on December 20, 2017 but discharged on January 10, 2018, (1) the resident's 5-Day PPS assessment would be used to determine whether the SNF met the data completion threshold for the 2017 reporting period (and associated program year), and (2) the discharge assessment would be used to determine whether the SNF met the data completion threshold for the 2018 reporting period (and associated program year) We also wish to clarify in this proposed rule that some assessment data will not invoke a response and in

those circumstances, data are not "missing" or incomplete. For example, in the case of a patient who does not have any of the medical conditions in a check all that apply listing, the absence of a response indicates that the condition is not present, and it would be incorrect to consider the absence of such data as missing in a threshold determination.

We are also proposing to apply this policy to the submission of standardized resident assessment data, and to codify it at § 413.360 of our regulations. We welcome comment on these proposals.

13. SNF QRP Data Validation Requirements

We refer readers to the FY 2016 SNF PPS final rule (80 FR 46458 through 46459) for a summary of our approach to the development of data validation process for the SNF QRP. At this time, we are continuing to explore data validation methodology that will limit the amount of burden and cost to SNFs, while allowing us to establish estimations of the accuracy of SNF QRP data.

14. SNF QRP Submission Exception and Extension Requirements

We refer readers to the FY 2016 SNF PPS final rule (80 FR 46459 through 46460) for our finalized policies regarding submission exception and extension requirements for the FY 2018 SNF QRP. At this time, we are not proposing any changes to the SNF QRP requirements that we adopted in these final rules. However, we are proposing to codify the SNF QRP Submission Exception and Extension Requirements at new § 413.360. We remind readers that, in the FY 2016 SNF PPS final rule (80 FR 46459 through 46460) we stated that SNF's must request an exception or extension by submitting a written request along with all supporting documentation to CMS via email to the SNF Exception and Extension mailbox at SNFQRPreconsiderations@cms.hhs.gov. We further stated that exception or extension requests sent to CMS through any other channel would not be considered as a valid request for an exception or extension from the SNF QRP's reporting requirements for any payment determination. In order to be considered, a request for an exception or extension must contain all of the requirements as outlined on our Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-QR-Reconsideration-and-Exception-and-Extension.html>. We are inviting public

comments on our proposal to codify the SNF QRP submission exception and extension requirements.

15. SNF QRP Submission Reconsideration and Appeals Procedures

We refer the reader to the FY 2016 SNF PPS final rule (80 FR 46460 through 46461) for a summary of our finalized reconsideration and appeals procedures for the SNF QRP beginning with the FY 2018 SNF QRP. We are not proposing any changes to these procedures. However, we are proposing to codify the SNF QRP Reconsideration and Appeals procedures at new § 413.360. Under these procedures, a SNF must follow a defined process to file a request for reconsideration if it believes that the finding of noncompliance with the reporting requirements for the applicable fiscal year is erroneous, and the SNF can file a request for reconsideration only after it has been found to be noncompliant. In order to be considered, a request for a reconsideration must contain all of the elements outlined on our Web site at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-QR-Reconsideration-and-Exception-and-Extension.html>. We stated that we would not review any reconsideration request that is not accompanied by the necessary documentation and evidence, and that the request should be emailed to CMS at the following email address: SNFQRPreconsiderations@cms.hhs.gov. We further stated that reconsideration requests sent to CMS through any other channel would not be considered. We are inviting public comments on our proposal to codify the SNF QRP reconsideration and appeals procedures.

16. Proposals and Policies Regarding Public Display of Measure Data for the SNF QRP

Section 1899B(g) of the Act requires the Secretary to establish procedures for the public reporting of SNFs' performance, including the performance of individual SNFs, on the measures specified under section (c)(1) and resource use and other measures specified under section (d)(1) of the Act (collectively, IMPACT Act measures) beginning not later than 2 years after the specified application date under section 1899B(a)(2)(E) of the Act. This is consistent with the process applied under section 1886(b)(3)(B)(viii)(VII) of the Act, which refers to the public display and review requirements for the Hospital Inpatient Quality Reporting

(IQR) Program. In addition, for a more detailed discussion about the provider's confidential review process prior to public display of measures, we refer readers to the FY 2017 SNF PPS final rule (81 FR 52045 through 52048).

In this FY 2018 SNF PPS proposed rule, pending the availability of data, we are proposing to publicly report data in CY 2018 for the following 3 assessment-based measures: (1) Application of Percent of Long-Term Care Hospital (LTCH) Patients With an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631); (2) Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (NQF #0678); and (3) Application of Percent of Residents Experiencing One or More Falls with Major Injury (NQF # 0674). Data collection for these 3 assessment-based measures began on October 1, 2016. We are proposing to display data for the assessment-based measures based on rolling quarters of data, and we would initially use discharges from January 1, 2016 through December 31, 2016.

In addition, we are proposing to publicly report 3 claims-based measures for: (1) Medicare Spending Per Beneficiary—PAC SNF QRP; (2) Discharge to Community—PAC SNF QRP; and (3) Potentially Preventable 30-Day Post-Discharge Readmission Measure for SNF QRP.

These measures were adopted for the SNF QRP in the FY 2017 SNF PPS rule to be based on data from one calendar year. As previously adopted in the FY 2017 SNF PPS final rule (81 FR 52045 through 52047), confidential feedback reports for these 3 claims-based measures will be based on data collected for discharges beginning January 1, 2016 through December 31, 2016. However, our current proposal revises the dates for public reporting

and we are proposing to transition from calendar year to fiscal year to make these measure data publicly available by October 2018.

For the Medicare Spending Per Beneficiary—PAC SNF QRP and Discharge to Community—PAC SNF QRP measures, we propose public reporting beginning in calendar year 2018 based on data collected from discharges beginning October 1, 2016, through September 30, 2017 and rates will be displayed based on one fiscal year of data. For the Potentially Preventable 30-day Post-Discharge Readmission Measure for SNF QRP, we are also proposing in this rule to increase the years of data used to calculate this measure from one year to two years and to update the associated reporting dates. If the proposed revisions to the Potentially Preventable 30-Day Post-Discharge Readmission Measure for SNF QRP are finalized as proposed, data will be publicly reported for this measure beginning with discharges beginning October 1, 2015, through September 30, 2017 and rates will be displayed based on two consecutive fiscal years of data.

Also, we propose to replace the assessment-based measure “Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678) with a modified version of the measure entitled “Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury” for the SNF QRP for future public reporting, if finalized. We refer readers to section V.B.7.a of this proposed rule for additional information regarding the proposed modification of the measure for quality reporting and public display.

For the assessment-based measures, Application of Percent of Long-Term Care Hospital (LTCH) Patients With an Admission and Discharge Functional

Assessment and a Care Plan That Addresses Function (NQF #2631); Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (NQF #0678); and Application of Percent of Residents Experiencing One or More Falls with Major Injury (NQF #0674), to ensure the statistical reliability of the measures, we are proposing to assign SNFs with fewer than 20 eligible cases during a performance period to a separate category: “The number of cases/resident stays is too small to report”. If a SNF had fewer than 20 eligible cases, the SNF's performance would not be publicly reported for the measure for that performance period.

For the claims-based measures, Medicare Spending Per Beneficiary—PAC SNF QRP; Discharge to Community—PAC SNF QRP; and Potentially Preventable 30-Day Post-Discharge Readmission Measure for SNF QRP, to ensure the statistical reliability of the measures, we are proposing to assign SNFs with fewer than 25 eligible cases during a performance period to a separate category: “The number of cases/resident stays is too small to report.” If a SNF had fewer than 25 eligible cases, the SNF's performance would not be publicly reported for the measure for that performance period. For Medicare Spending Per Beneficiary—PAC SNF QRP, to ensure the statistical reliability of the measure, we are proposing to assign SNFs with fewer than 20 eligible cases during a performance period to a separate category: “The number of cases/resident stays is too small to report.” If a SNF has fewer than 20 eligible cases, the SNF's performance would not be publicly reported for the measure for that performance period.

TABLE 22—SUMMARY OF PROPOSED MEASURES FOR CY 2018 PUBLIC DISPLAY

Proposed Measures:

- Percent of Residents or Patients with Pressure Ulcers that Are New or Worsened (Short Stay) (NQF #0678).
- Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay) (NQF #0674).
- Application of Percent of Long-Term Care Hospital (LTCH) Patients With an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631).
- Potentially Preventable 30-Day Post-Discharge Readmission Measure for SNF QRP.
- Discharge to Community—(PAC) SNF QRP.
- Medicare Spending Per Beneficiary (PAC) SNF QRP.

We invite public comment on the proposal for the public display of these 3 assessment-based measures and 3 claims-based measures, and the replacement of “Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (NQF #0678) with a modified version of the measure,

“Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury” described above.

17. Mechanism for Providing Confidential Feedback Reports to SNFs

Section 1899B(f) of the Act requires the Secretary to provide confidential

feedback reports to PAC providers on their performance on the measures specified under subsections (c)(1) and (d)(1) of section 1899B of the Act, beginning one year after the specified application date that applies to such measures and PAC providers. In the FY 2017 SNF PPS final rule (81 FR 52046

through 52048), we finalized processes to provide SNF providers the opportunity to review their data and information using confidential feedback reports that will enable SNFs to review their performance on the measures required under the SNF QRP.

Information on how to obtain these and other reports available to the SNF QRP can be found at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-Quality-Reporting-Program-Spotlights-and-Announcements.html>. We are not proposing any changes to this policy.

C. Skilled Nursing Facility Value-Based Purchasing Program (SNF VBP)

1. Background

Section 215 of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93) authorized the SNF VBP Program (the “Program”) by adding sections 1888(g) and (h) to the Act. As a prerequisite to implementing the SNF VBP Program, in the FY 2016 SNF PPS final rule (80 FR 46409 through 46426) we adopted an all-cause, all-condition hospital readmission measure, as required by section 1888(g)(1) of the Act. In the FY 2017 SNF PPS final rule (81 FR 51986 through 52009), we adopted an all-condition, risk-adjusted potentially preventable hospital readmission measure for SNFs, as required by section 1888(g)(2) of the Act. In this proposed rule, we are making proposals related to the implementation of the Program.

Section 1888(h)(1)(B) of the Act requires that the SNF VBP Program apply to payments for services furnished on or after October 1, 2018. The SNF VBP Program applies to freestanding SNFs, SNFs affiliated with acute care facilities, and all non-CAH swing-bed rural hospitals. We believe the implementation of the SNF VBP Program is an important step towards transforming how care is paid for, moving increasingly towards rewarding better value, outcomes, and innovations instead of merely volume.

For additional background information on the SNF VBP Program, including an overview of the SNF VBP Report to Congress and a summary of the Program’s statutory requirements, we refer readers to the FY 2016 SNF PPS final rule (80 FR 46409 through 46410). We also refer readers to the FY 2017 SNF PPS final rule (81 FR 51986 through 52009) for discussion of the policies that we adopted related to the potentially preventable hospital

readmission measure, scoring, and other topics.

In this rule, we are proposing to implement requirements for the SNF VBP Program, as well as codify some of those requirements at § 413.338, including certain definitions, the process for making value-based incentive payments, limitations on review, and other requirements.

2. Measures

a. Background

For background on the measures in the SNF VBP Program, we refer readers to the FY 2016 SNF PPS final rule (80 FR 46419), where we finalized the Skilled Nursing Facility 30-Day All-Cause Readmission Measure (SNFRM) (NQF #2510) that we will use for the SNF VBP Program. We also refer readers to the FY 2017 SNF PPS final rule (81 FR 51987 through 51995), where we finalized the Skilled Nursing Facility 30-Day Potentially Preventable Readmission Measure (SNFPPR) that we will use for the SNF VBP Program instead of the SNFRM as soon as practicable.

b. Request for Comment on Measure Transition

Section 1886(h)(2)(B) of the Act requires us to apply the SNFPPR to the SNF VBP Program instead of the SNFRM “as soon as practicable.” We intend to propose a timeline for replacing the SNFRM with the SNFPPR in future rulemaking, after we have had a sufficient opportunity to analyze the potential effects of this replacement on SNFs’ measured performance. We believe we must approach the decision about when it is practicable to replace the SNFRM thoughtfully, and we continue to welcome public feedback on when it is practicable to replace the SNFRM with the SNFPPR.

In the FY 2017 SNF PPS final rule (81 FR 51995), we summarized the public comments we received in response to our request for when we should begin to measure SNFs on their performance on the SNFPPR instead of the SNFRM. Commenters’ views were mixed; one suggested that we replace the SNFRM immediately, while others requested that we wait until the SNFPPR receives NQF endorsement, or that we allow SNFs to receive and understand their SNFPPR data for at least 1 year prior to beginning to use it. Another commenter suggested that we decline to use the SNFPPR until the measure receives additional support from the Measure Application Partnership and is the subject of additional public comment.

We would like to thank stakeholders for their input on this issue. We believe

the first opportunity to replace the SNFRM with the SNFPPR would be the FY 2021 program year, which would give SNFs experience with the SNFRM and other measures of readmissions such as those adopted under the SNF QRP. However, we have not yet determined if it would be practicable to replace the SNFRM at that time. We intend to continue to analyze SNF performance on the SNFPPR in comparison to the SNFRM and assess how the replacement of the SNFRM with the SNFPPR will affect the quality of care provided to Medicare beneficiaries.

We again request public comments on when we should replace the SNFRM with the SNFPPR, particularly in light of our proposal (discussed further in this section) to adopt performance and baseline periods based on the federal FY rather than on the calendar year.

c. Updates to the Skilled Nursing Facility 30-Day All-Cause Readmission Measure (NQF #2510)

Since finalizing the SNFRM for use in the SNF VBP Program, we have continued to conduct analyses using more recent data, as well as to make some necessary non-substantive measure refinements. Results of this work and all refinements are detailed in a *Technical Report Supplement* that is available on the following CMS Web site: <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/Other-VBPs/SNF-VBP.html>.

d. Accounting for Social Risk Factors in the SNF VBP Program

We understand that social risk factors such as income, education, race and ethnicity, employment, disability, community resources, and social support (certain factors of which are also sometimes referred to as socioeconomic status (SES) factors or socio-demographic status (SDS) factors) play a major role in health. One of our core objectives is to improve beneficiary outcomes including reducing health disparities, and we want to ensure that all beneficiaries, including those with social risk factors, receive high quality care. In addition, we seek to ensure that the quality of care furnished by providers and suppliers is assessed as fairly as possible under our programs while ensuring that beneficiaries have adequate access to excellent care.

We have been reviewing reports prepared by the Office of the Assistant Secretary for Planning and Evaluation

(ASPE)⁸⁸ and the National Academies of Sciences, Engineering, and Medicine on the issue of accounting for social risk factors in CMS' value-based purchasing and quality reporting programs, and considering options on how to address the issue in these programs. On December 21, 2016, ASPE submitted a Report to Congress on a study it was required to conduct under section 2(d) of the Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014. The study analyzed the effects of certain social risk factors in Medicare beneficiaries on quality measures and measures of resource use used in one or more of nine Medicare value-based purchasing programs, including the SNF VBP Program.⁸⁹ The report also included considerations for strategies to account for social risk factors in these programs. In a January 10, 2017 report released by The National Academies of Sciences, Engineering, and Medicine, that body provided various potential methods for measuring and accounting for social risk factors, including stratified public reporting.⁹⁰

As noted in the FY 2017 IPPS/LTCH PPS final rule, the NQF has undertaken a 2-year trial period in which certain new measures, measures undergoing maintenance review, and measures endorsed with the condition that they enter the trial period can be assessed to determine whether risk adjustment for selected social risk factors is appropriate for these measures. This trial entails temporarily allowing inclusion of social risk factors in the risk-adjustment approach for these measures. At the conclusion of the trial, NQF will issue recommendations on the future inclusion of social risk factors in risk adjustment for these quality measures, and we will closely review its findings.

The SNF VBP section of ASPE's report examined the relationship between social risk factors and performance on the 30-day SNF readmission measure for beneficiaries in SNFs. Findings indicated that beneficiaries with social risk factors

were more likely to be re-hospitalized but that this effect was significantly smaller when the measure's risk adjustment variables were applied (including adjustment for age, gender, and comorbidities), and that the effect of dual enrollment disappeared. In addition, being at a SNF with a high proportion of beneficiaries with social risk factors was associated with an increased likelihood of readmissions, regardless of a beneficiary's social risk factors. We encourage readers to examine this chapter of ASPE's report, and we seek any comments on the report's analysis and findings.

As we continue to consider the analyses and recommendations from these reports and await the results of the NQF trial on risk adjustment for quality measures, we are continuing to work with stakeholders in this process. As we have previously communicated, we are concerned about holding providers to different standards for the outcomes of their patients with social risk factors because we do not want to mask potential disparities or minimize incentives to improve the outcomes for disadvantaged populations. Keeping this concern in mind, while we sought input on this topic previously, we continue to seek public comment on whether we should account for social risk factors in the SNF VBP Program, and if so, what method or combination of methods would be most appropriate for accounting for social risk factors. Examples of methods include: Adjustment of the payment adjustment methodology under the SNF VBP Program; adjustment of provider performance scores (for instance, stratifying providers based on the proportion of their patients who are dual eligible); confidential reporting of stratified measure rates to providers; public reporting of stratified measure rates; risk adjustment of measures as appropriate based on data and evidence; and redesigning payment incentives (for instance, rewarding improvement for providers caring for patients with social risk factors or incentivizing providers to achieve health equity). While we consider whether and to what extent we currently have statutory authority to implement one or more of the above-described methods, we are seeking comments on whether any of these methods should be considered, and if so, which of these methods or combination of methods would best account for social risk factors in the SNF VBP Program.

In addition, we are seeking public comment on which social risk factors might be most appropriate for stratifying measure scores and/or potential risk

adjustment of a particular measure. Examples of social risk factors include, but are not limited to, dual eligibility/low-income subsidy, race and ethnicity, and geographic area of residence. We are seeking comments on which of these factors, including current data sources where this information would be available, could be used alone or in combination, and whether other data should be collected to better capture the effects of social risk. We will take commenters' input into consideration as we continue to assess the appropriateness and feasibility of accounting for social risk factors in the SNF VBP Program. We note that any such changes would be proposed through future notice-and-comment rulemaking.

We look forward to working with stakeholders as we consider the issue of accounting for social risk factors and reducing health disparities in CMS programs. Of note, implementing any of the above methods would be taken into consideration in the context of how this and other CMS programs operate (for example, data submission methods, availability of data, statistical considerations relating to reliability of data calculations, among others), and we also welcome comment on operational considerations. CMS is committed to ensuring that its beneficiaries have access to and receive excellent care, and that the quality of care furnished by providers and suppliers is assessed fairly in CMS programs.

3. Proposed FY 2020 Performance Standards

We refer readers to the FY 2017 SNF PPS final rule (81 FR 51995 through 51998) for a summary of the statutory provisions governing performance standards under the SNF VBP Program and our finalized performance standards policy, as well as the numerical values for the achievement threshold and benchmark for the FY 2019 program year. We also responded to public comments on these policies in that final rule.

In this proposed rule, we are providing estimates of the numerical values of the achievement threshold and the benchmark for the FY 2020 program year. We have based these values on the FY 2016 MedPAR files including a 3-month run-out period. We intend to include the final numerical values in the FY 2018 SNF PPS final rule. However, as finalized in the FY 2017 SNF PPS final rule (81 FR 51998), if we are unable to complete the necessary calculations in time to include the final numerical values in the FY 2018 SNF

⁸⁸ Office of the Assistant Secretary for Planning and Evaluation. 2016. Report to Congress: Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Programs. Available at <https://aspe.hhs.gov/pdf-report/report-congress-social-risk-factors-and-performance-under-medicares-value-based-purchasing-programs>.

⁸⁹ Office of the Assistant Secretary for Planning and Evaluation. 2016. Report to Congress: Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Programs. Available at <https://aspe.hhs.gov/pdf-report/report-congress-social-risk-factors-and-performance-under-medicares-value-based-purchasing-programs>.

⁹⁰ National Academies of Sciences, Engineering, and Medicine. 2017. Accounting for social risk factors in Medicare payment. Washington, DC: The National Academies Press.

PPS final rule, we will publish the numerical values not later than 60 days prior to the beginning of the performance period that applies to the FY 2020 program year, and we will notify SNFs and the public of those final numerical values through a listserv

email and a posting on the QualityNet News portion of the Web site. Additionally, as discussed further below, we are proposing to adopt baseline and performance periods for the FY 2020 program year based on the federal fiscal year rather than the calendar year as we had finalized for the

FY 2019 program year. The estimated numerical values for the achievement threshold and benchmark in Table 23 reflect this proposal by using FY 2016 claims data. As we have done in prior rulemaking, we have inverted the SNFRM rates in Table 23 so that higher values represent better performance.

TABLE 23—ESTIMATED FY 2020 SNF VBP PROGRAM PERFORMANCE STANDARDS

Measure ID	Measure description	Achievement threshold	Benchmark
SNFRM	SNF 30-Day All-Cause Readmission Measure (NQF #2510)	0.80218	0.83721

We welcome public comments on these estimated achievement threshold and benchmark values.

4. Proposed FY 2020 Performance Period and Baseline Period

a. Background

We refer readers to the FY 2016 SNF PPS final rule (80 FR 46422) for a discussion of the considerations that we took into account when specifying performance periods under the SNF VBP Program. Based on those considerations, as well as public comment, we adopted CY 2017 as the performance period for the FY 2019 SNF VBP Program, with a corresponding baseline period of CY 2015.

b. FY 2020 Proposals

Although we continue to believe that a 12-month performance and baseline period are appropriate for the Program, we are concerned about the operational challenges of linking the 12-month periods to the calendar year. Specifically, the allowance of an approximately 90-day claims run out period following the last date of discharge, coupled with the length of time needed to calculate the measure rates using multiple sources of claims needed for statistical modeling, determine achievement and improvement scores, allow SNFs to review their measure rates, and determine the amount of payment adjustments could risk delay in meeting requirement at section 1888(h)(7) of the Act to notify SNFs of their value-based incentive payment percentages not later than 60 days prior to the fiscal year involved.

We therefore considered what policy options we had to mitigate this risk and ensure that we comply with the statutory deadline to notify SNFs of their payment adjustments under the Program.

We continue to believe that a 12-month performance and baseline period

provide a sufficiently reliable and valid data set for the SNF VBP Program. We also continue to believe that, where possible and practicable, the baseline and performance period should be aligned in length and in months included in the selections. Taking those considerations and beliefs into account, we propose to adopt FY 2018 (October 1, 2017, through September 30, 2018) as the performance period for the FY 2020 SNF VBP Program, with FY 2016 (October 1, 2015, through September 30, 2016) as the baseline period for purposes of calculating performance standards and measuring improvement. This proposed policy, will, if finalized, give us an additional 3 months between the conclusion of the performance period and the 60-day notification deadline prescribed by section 1888(h)(7) of the Act to complete the activities described above.

We are aware that making this transition from the calendar year to the federal FY will result in our measuring SNFs on their performance during Q4 of 2017 (October 1, 2017, through December 31, 2017) for both the FY 2019 program year and the FY 2020 program year. During the FY 2019 program year, that quarter will fall at the end of the finalized performance period (January 1, 2017, through December 31, 2017), while during the FY 2020 program year, that quarter will fall at the beginning of the proposed performance period (October 1, 2017, through September 30, 2018). We believe that, on balance, this overlap in data is more beneficial than the alternative. We considered proposing not to use that quarter of measured performance during the FY 2020 program year, but, as a result, we would be left with fewer than 12 months of data with which to score SNFs under the program. As we have stated, we believe it is important to use 12 months of data to avoid seasonality issues and to assess SNFs fairly. We therefore believe that meeting these operational challenges, in total,

outweighs any cost to SNFs associated with including a single quarter's SNFRM data in their SNF performance scores twice.

However, as an alternative, we request comments on whether or not we should instead consider adopting for the FY 2020 Program a one-time, three-quarter performance period of January 1, 2018, through September 30, 2018, and a one-time, three-quarter baseline period of January 1, 2016 through September 30, 2016 in order to avoid the overlap in performance period quarters that we describe above. We believe this option could provide us with sufficiently reliable SNFRM data for purposes of the Program's scoring while ensuring that SNFs are not scored on the same quality measure data in successive Program years. However, we note that the shorter measurement period could result in lower denominator counts and seasonal variations in care, as well as disparate effects of cold weather months on SNFs' care could also create variations in quality measurement, and could potentially disproportionately affect SNFs in different areas of the country. Under this alternative, we would resume a 12-month performance and baseline period beginning with the FY 2021 program year

We welcome public comments on our proposal and alternative. In addition, as we continue considering potential policy changes once we replace the SNFRM with the SNFPPR, we also seek comment on whether or not we should consider other potential performance and baseline periods for that measure. We specifically request comments on whether or not we should attempt to align the SNF VBP Program's performance and baseline periods with other CMS value-based purchasing programs, such as the Hospital VBP Program or Hospital Readmissions Reduction Program, which could mean proposing to adopt performance and baseline periods that run from July 1st to June 30th.

5. SNF VBP Performance Scoring

We refer readers to the FY 2017 SNF PPS final rule (81 FR 52000 through 52005) for a detailed discussion of the scoring methodology that we have finalized for the Program, along with responses to public comments on our policies and examples of scoring calculations.

a. Proposed Rounding Clarification for SNF VBP Scoring

In the FY 2017 SNF PPS final rule (81 FR 52001), we adopted formulas for scoring SNFs on achievement and improvement. The final step in these calculations is rounding the scores to the nearest whole number.

As we have continued examining SNFRM data, we have identified a concern related to that rounding step. Specifically, we are concerned that rounding SNF performance scores to the nearest whole number is insufficiently precise for purposes of establishing value-based incentive payments under the Program. Rounding scores in this manner has the effect of producing significant numbers of tie scores, since SNFs have between 0 and 100 points available under the Program, and we estimate that more than 16,000 SNFs will participate in the Program. As discussed further in this section, the exchange function methodology that we are proposing to adopt is most easily implemented when we are able to differentiate precisely among SNF performance scores in order to provide each SNF with a unique value-based incentive payment percentage.

We therefore propose to change the rounding policy from that previously finalized for SNF VBP Program scoring methodology, and instead to award points to SNFs using the formulas that we adopted in last year's rule by rounding the results to the nearest ten-thousandth of a point. Using significant digits terminology, we propose to use no more than five significant digits to the right of the decimal point when calculating SNF performance scores and subsequently calculating value-based incentive payments. We view this policy change as necessary to ensure that the Program scores SNFs as precisely as possible and to ensure that value-based incentive payments reflect SNF performance scores as accurately as possible.

We welcome public comments on this proposal.

b. Request for Comments on Policies for Facilities With Zero Readmissions During the Performance Period

In our analyses of historical SNFRM data, we identified a unit imputation issue associated with certain SNFs' measured performance. Specifically, we found that a small number of facilities had zero readmissions during the applicable performance period. An observed readmission rate of zero is a desirable outcome; however, due to risk-adjustment and the statistical approach used to calculate the measure, outlier values are shifted towards the mean, particularly for smaller SNFs. As a result, observed readmission rates of zero result in risk-standardized readmission rates that are greater than zero. Analysis conducted by our measure development contractor revealed that it may be possible—although rare—for SNFs with zero readmissions to receive a negative value-based incentive payment adjustment. We are concerned that assigning a net negative value-based incentive payment to a SNF that achieved zero readmissions during the applicable performance period would not support the Program's goals.

We considered our policy options for SNFs that could be affected by this issue, including excluding SNFs with zero readmissions from the Program entirely in order to ensure that they are not unduly harmed by being assigned a non-zero RSRR by the measure's finalized methodology. However, because the Program's statute requires us to include all SNFs in the Program, we do not believe we have the authority to exclude any SNFs from the payment withhold and from value-based incentive payments. We also considered proposing to replace SNF performance scores for those SNFs in this situation with the median SNF performance score. But because we must pay SNFs ranked in the lowest 40 percent less than the amount they would otherwise be paid in the absence of the SNF VBP, we do not believe that assigning these SNFs the median performance rate on the applicable measure would necessarily protect them from receiving net negative value-based incentive payments, even though they had accomplished a clinical goal set out specifically by the Program.

We are considering different policy options to ensure that SNFs achieving zero readmissions among their patient populations during the performance period do not receive a negative

payment adjustment. We intend to address this topic in future rulemaking, and we request public comments on what accommodations, if any, we should employ to ensure that SNFs meeting our quality goals are not penalized under the Program. We specifically request comments on the form this potential accommodation should take.

c. Request for Comments on Extraordinary Circumstances Exception Policy

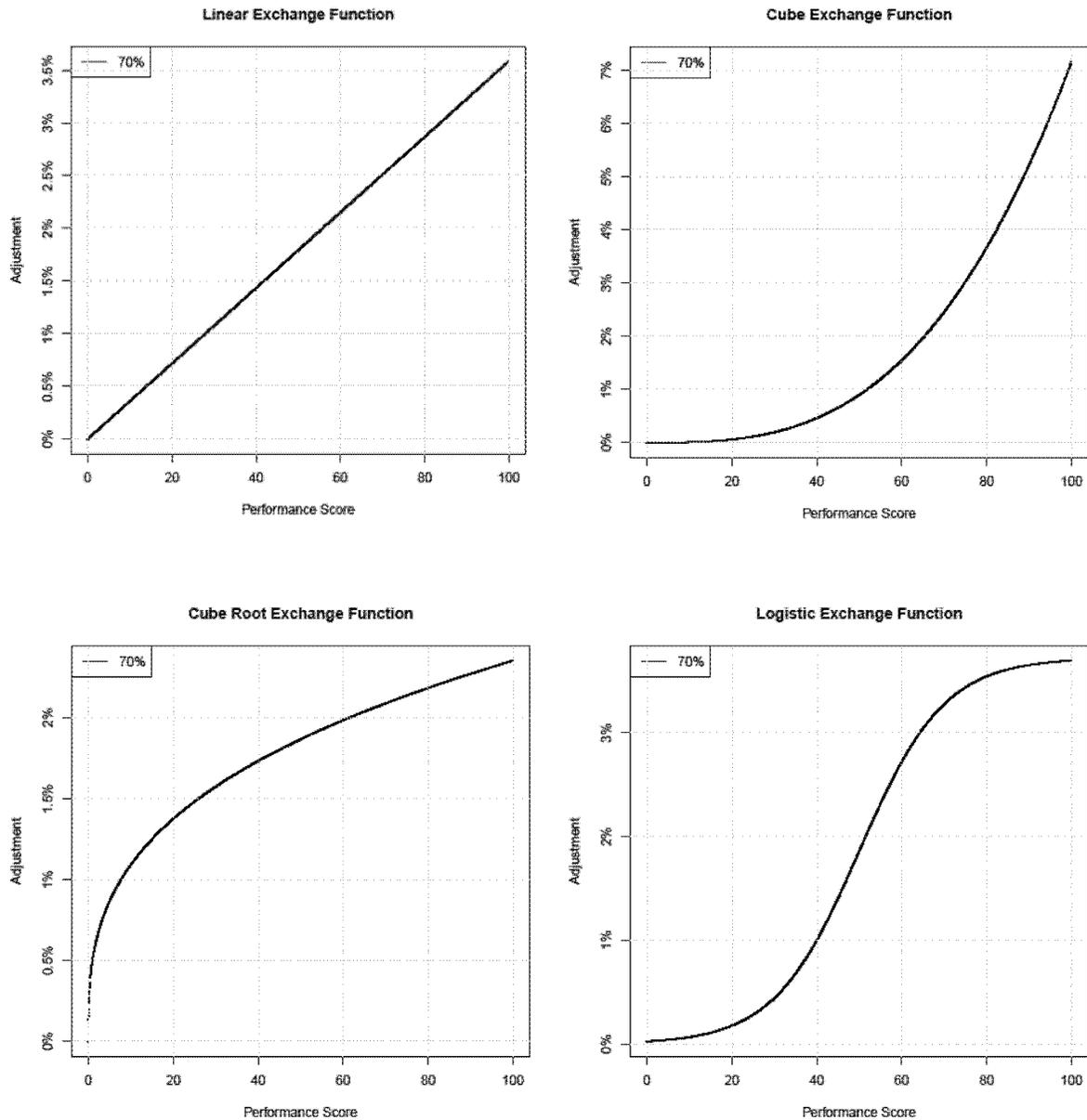
In other value-based purchasing programs, such as the Hospital VBP Program (see 78 FR 50704 through 50706), as well as several of our quality reporting programs, we have adopted Extraordinary Circumstances Exceptions policies intended to allow participating facilities to receive administrative relief from program requirements due to natural disasters or other circumstances beyond the facility's control that may affect the facility's ability to provide high-quality health care.

We are considering whether or not this type of policy would be appropriate for the SNF VBP Program. We intend to address this topic in future rulemaking. We therefore request public comments on whether or not we should implement such a policy, and if so, the form the policy should take and the authority we should employ. If we propose such a policy in the future, our preference would be to align it with the Extraordinary Circumstances Exception policy adopted under our other quality programs.

6. SNF Value-Based Incentive Payments

a. Proposed Exchange Function

We refer readers to the FY 2017 SNF PPS final rule (81 FR 52005 through 52006) for discussion of four possible exchange functions that we considered adopting in order to translate SNFs' performance scores into value-based incentive payments. We have created new graphical representations of the four functions that we have considered in the past—linear, cube, cube root, and logistic—and present those updated representations here. We note that the actual exchange functions' forms and slopes will vary depending on the distributions of SNFs' performance scores from the FY 2019 performance period, and wish to emphasize that these representations are presented solely for the reader's clarity as we discuss our proposed exchange function policy.

FIGURE 1: SNF VBP Exchange Function Forms That We Considered

We have continued examining historical SNFRM data while considering our policy options for this program. We have attempted to assess how each of the four possible exchange functions that we set out in the FY 2017 SNF PPS final rule, as well as potential variations, would affect SNFs' incentive payments under the Program. We specifically considered the effects of the statutory constraints on the Program's value-based incentive payments and our belief that in order to create an effective incentive payment program, SNFs' value-based incentive payments must be widely distributed to reward higher performing SNFs through increased

payment and to make reduced payments to lower performing SNFs. We also considered our desire to avoid unintended consequences of the Program's incentive payments, particularly since the Program is limited by statute to using a single measure at a time, and our view that an equitable distribution of value-based incentive payments would be most appropriate to ensure that all SNFs, including SNFs serving at-risk populations, could potentially qualify for incentive payments.

In our view, important factors when adopting an exchange function include the number of SNFs that receive more

in value-based incentive payments than the number of SNFs for which a reduction is applied to their Medicare payments, as well as the incentive for SNFs to reduce hospital readmissions. We hold this view because we believe that the Program will be most effective at encouraging SNFs to improve the quality of care that they provide to Medicare beneficiaries if SNFs have the opportunity to earn incentives, rather than simply avoid penalties, through high performance on the applicable quality measure. We also believe that SNFs must have incentives to reduce hospital readmissions for their patients

no matter where their performance lies in comparison to their peers.

Taking those considerations into account, we analyzed the four exchange functions on which we have previously sought comment—linear, cube, cube root, and logistic—as well as variations of those exchange functions. We scored SNFs using historical SNFRM data and modeled SNFs' value-based incentive payments using each of the functions in turn. We evaluated the distribution of value-based incentive payments that resulted from each function, as well as the number of SNFs with positive payment adjustments and the value-based incentive payment percentages that resulted from each function. We also evaluated the functions' results for the statutory requirements in section 1888(h)(5)(C)(ii) of the Act, including the requirements in subclause (I) that the percentage be based on the SNF performance score for each SNF, in subclause (II) that the application of all such percentages results in an appropriate distribution, and in items (aa), (bb), and (cc) of subclause (II), specifying that SNFs with the highest rankings receive the highest value-based incentive payment amounts, that SNFs with the lowest rankings receive the lowest value-based incentive payment amounts, and that the SNFs in the lowest 40 percent of the ranking receive a lower payment rate than would otherwise apply.

In our analyses, of the four baseline functions, we found that the logistic function maximized the number of SNFs with positive payment adjustments among SNFs measured using the SNFRM. We also found that the logistic function best fulfills the requirement that the SNFs in the lowest 40 percent of the ranking receive a lower payment rate than would otherwise apply, resulted in an appropriate distribution of value-based incentive payment percentages, and fulfilled the other statutory requirements described in this proposed rule. Specifically, we noted that the logistic function provided a broad range of SNFs with net-positive value-based incentive payments, and while it did not provide the highest value-based incentive payment percentage to the top performers of all of the functions, we viewed the number of SNFs with positive payment adjustments as a more important consideration than the highest value-based incentive payment percentages being awarded.

We also considered alignment of VBP payment methodologies across fee-for-service Medicare VBP programs, including the Hospital VBP program and Quality Payment Program (QPP).

We recognize that aligning payment methodologies would help stakeholders that use VBP payment information across care settings better understand the SNF VBP payment methodology. Both the Hospital VBP program and QPP use some form of a linear exchange function for payment. Three key program aspects that facilitate the use of a linear exchange function are the programs' number of measures, measure weights, and correlation across program measures. These three aspects in tandem contribute to the approximately normal distribution of scores expected in the Hospital VBP program and QPP. No single measure is the key driver that might "tilt" scores to a non-normal distribution. Since both programs are required to be budget neutral, our modeling estimates that scores translate into an approximately equal number of providers with positive payment adjustments and providers receiving a net payment reduction.

In contrast, the SNF VBP payment adjustment is driven, in part, by two specific SNF VBP statutory requirements: The program use of a single measure; and the requirement that the total amount of value-based incentive payments for all SNFs in a fiscal year be between 50 and 70 percent of the total amount of reductions to payments for that fiscal year, as estimated by the Secretary. Our analysis of the linear exchange function showed that more SNFs would receive a net payment reduction than a payment incentive because the total amount available for incentive payments in a fiscal year is limited to between 50 and 70 percent of the total amount of the reduction to SNF payments for that fiscal year. The linear exchange function also results in the provision of a net payment reduction to a higher percentage of SNFs that exceeded the 50th percentile of national performance, relative to the logistic payment function. We believe that these findings are unique to the SNF VBP program, relative to other fee-for-service Medicare programs, because of the limitation on the total amount that we can use for incentive payments, coupled with the use of a single measure and the corresponding scoring distribution.

In addition to the four baseline functions described further above, we considered adjusting the linear function in order to be able to make positive payment adjustments to a greater number of SNFs. Specifically, we tested an alternative where we reduced the baseline linear function by 20 percent, then redistributed the resulting funds to the middle 40 percent of SNFs. We found that the use of this linear function

with adjustment would enable us to make a positive payment adjustment to a slightly greater number of SNFs than we would be able to make using the logistic function. However, we were concerned with the additional complexity involved in implementing this type of two-step adjustment to the linear exchange function.

Taking all of these considerations into account, we propose to adopt a logistic function for the FY 2019 SNF VBP Program and subsequent years. Under this policy, we will:

1. Estimate Medicare spending on SNF services for the FY 2019 payment year;
2. Estimate the total amount of reductions to SNFs' adjusted Federal per diem rates for that year, as required by statute;
3. Calculate the amount realized under the payback percentage proposal (discussed further below);
4. Order SNFs by their SNF performance scores; and
5. Assign a value-based incentive payment multiplier to each SNF that corresponds to a point on the logistic exchange function that corresponds to its SNF performance score.

As proposed and discussed further in this proposed rule, we will model the logistic exchange function in such a form that the estimated total amount of value-based incentive payments equals not more than 60 percent of the amounts withheld from SNFs' claims. While the function's specific form will also depend on the distribution of SNF performance scores during the performance period, the formula that we have used to construct the logistic exchange function and that we intend to use for FY 2019 program calculations is:

$$y_i = \frac{1}{1 + e^{-0.1(x_i - 50)}}$$

where x_i is the SNF's performance score.

We welcome public comments on this proposal, and in particular, on whether a linear function with adjustment would alternatively be feasible for the SNF VBP Program, potentially beginning with FY 2019.

b. Payback Percentage Proposal

Section 1888(h)(6)(A) of the Act requires the Secretary to reduce the adjusted federal per diem rate determined under section 1888(e)(4)(G) of the Act otherwise applicable to a SNF for services furnished by that SNF during a fiscal year by the applicable percent (which, under section 1888(h)(6)(B) of the Act is 2 percent for FY 2019 and succeeding fiscal years) to fund the value-based incentive

payments for that fiscal year. Section 1888(h)(5)(C)(ii)(III) of the Act further specifies that the total amount of value-based incentive payments under the Program for all SNFs in a fiscal year must be greater than or equal to 50 percent, but not greater than 70 percent, of the total amount of the reductions to payments for that fiscal year under the Program, as estimated by the Secretary. Thus, we must decide what percentage of the total amount of the reductions to payments for a fiscal year we will pay as value-based incentive payments to SNFs based on their performance under the Program for that fiscal year.

As with our exchange function proposal described in this proposed rule, we view the important factors when specifying a payback percentage as the number of SNFs that receive a positive payment adjustment and the marginal incentives for all SNFs to reduce hospital readmissions and make broad-based care quality improvements, as well as the Medicare Program's long-term sustainability through the additional estimated Medicare trust fund savings. We intend for the proposed payback percentage to appropriately balance these factors. We analyzed the distribution of value-based incentive payments using historical data, focusing on the full range of available payback percentages.

Taking these considerations into account, we propose that the total amount of funds that would be available to pay as value-based incentive payments in a fiscal year would be 60 percent of the reductions to payments otherwise applicable to SNF Medicare payments for that fiscal year, as estimated by the Secretary. We believe that 60 percent is the most appropriate payback percentage to balance the considerations described in this proposed rule.

We note that we intend to monitor the effects of the payback percentage policy on Medicare beneficiaries, on participating SNFs, and on their measured performance closely. We intend to consider proposing to adjust the payback percentage in future rulemaking. In our consideration, we would include the program's effects on readmission rates, potential unintended consequences of SNF care to beneficiaries included in the measure, and SNF profit margins. Since the SNF VBP Program is a new, single measure value-based purchasing program and will continue to evolve as we implement it—including, for example, changing from the SNF Readmission Measure to the SNFPPR as required by statute—we intend to evaluate its effects carefully.

We note also that the Medicare Payment Advisory Commission's research has shown that for-profit SNFs' average Medicare margins are significantly positive,⁹¹ though not-for-profit SNFs' average Medicare margins are substantially lower, and we request comment on the extent to which that should be considered in our policy. We also recognize that there is some evidence that not-for-profit SNFs tend to perform better on measures of hospital readmissions than for-profit SNFs,⁹² and we request comment on whether our proposed payback percentage appropriately balances Medicare's long-term sustainability with the need to provide strong incentives for quality improvement to top-performing but lower-margin SNFs.

We welcome public comments on this proposal.

7. SNF VBP Reporting

a. Confidential Feedback Reports

We refer readers to the FY 2017 SNF PPS final rule (81 FR 52006 through 52007) for discussion of our intention to use the QIES system CASPER files to fulfill the requirement in section 1888(g)(5) of the Act that we provide quarterly confidential feedback reports to SNFs on their performance on the Program's measures. We also responded in that final rule to public comments on the appropriateness of the QIES system.

We provided SNFs with a test report in September 2016, followed by data on SNFs' CY 2013 performance on the SNFRM in December 2016 and SNFs' CY 2014 performance on the SNFRM in March 2017. We intend to continue providing SNFs with their performance data each quarter as required by the statute.

We welcome feedback from SNFs on the contents of the quarterly reports and what additional elements, if any, we should consider including that would be useful for quality improvement efforts. We specifically seek comment on what patient-level data would be most helpful to SNFs if they were to request such data from us as part of their quality improvement efforts.

⁹¹ Medicare Payment Advisory Commission, March 2017 Report to the Congress, ch. 8: Skilled nursing facility services, Table 8–6. http://medpac.gov/docs/default-source/reports/mar17_entirereport.pdf.

⁹² Neuman, M.D., Wirtalla, C., Werner, R.M. Association Between Skilled Nursing Facility Quality Indicators and Hospital Readmissions. *JAMA*. 2014;312(15):1542–1551. doi:10.1001/jama.2014.13513. Retrieved from <http://jamanetwork.com/journals/jama/fullarticle/1915609>.

b. Review and Corrections Process: Phase Two

In the FY 2017 SNF PPS final rule (81 FR 52007 through 52009), we adopted a two-phase review and corrections process for SNFs' quality measure data that will be made public under section 1888(g)(6) of the Act and SNF performance information that will be made public under section 1888(h)(9) of the Act. We explained that we would accept corrections to the quality measure data used to calculate the measure rates that is included in any SNF's quarterly confidential feedback report, and also that we would provide SNFs with an annual confidential feedback report containing the performance information that will be made public. We detailed the process for requesting Phase One corrections and finalized a policy whereby we would accept Phase One corrections to SNFs' quarterly reports through March 31 following the report's issuance via the CASPER system.

In this proposed rule, we are proposing to adopt additional specific requirements for the Phase Two review and correction process. Specifically, we are proposing to limit Phase Two correction requests to the SNF's performance score and ranking because all SNFs would have already had the opportunity to correct their quality measure data through the Phase One corrections process.

We are proposing to provide these reports to SNFs at least 60 days prior to the FY involved. SNFs will not be allowed to request corrections to their value-based incentive payment adjustments. However, we will make confirming corrections to a SNF's value-based incentive payment adjustment if a SNF successfully requests a correction to its SNF performance score.

As with Phase One, we propose that Phase Two correction requests must be submitted to the *SNFVBPInquiries@cms.hhs.gov* mailbox, and must contain the following information:

- SNF's CMS Certification Number (CCN);
- SNF Name;
- The correction requested and the SNF's basis for requesting the correction.

Specifically, the SNF must identify the error for which it is requesting correction, and explain the reason for requesting the correction. The SNF must also submit documentation or other evidence, if available, supporting the request. As noted above, corrections requested during Phase Two will be limited to SNFs' performance score and ranking. However, we note that the

SNFVBPinquiries@cms.hhs.gov mailbox cannot receive secured email messages. If any SNF believes it needs to submit patient-sensitive information as part of a correction request, we request that the SNF contact us at the mailbox to arrange a secured transfer.

We further propose that SNFs must make any correction requests no later than 30 days following the date of our posting of their annual SNF performance score report via the QIES system CASPER files. For example, if we post the reports on August 1, 2017, SNFs must review these reports and submit any correction requests by 11:59 p.m. Eastern Standard Time on August 31, 2017 (or the next business day, if the 30th day following the date of the posting is a weekend or federal holiday). We will not consider any requests for corrections to SNF performance scores or rankings that are received after this deadline.

We will review all timely Phase Two correction requests that we receive and will provide responses to SNFs that have requested corrections as soon as practicable. We will re-issue an updated SNF performance score report to any SNF that requests a correction with which we agree, and if necessary, will update any public postings on *Nursing Home Compare* and value-based incentive payment percentages, as applicable.

We welcome public comments on this proposed Phase Two corrections process.

c. SNF VBP Program Public Reporting Proposal

We refer readers to the FY 2017 SNF PPS final rule (81 FR 52009) for discussion of the statutory requirements governing the public reporting of SNFs' performance information under the SNF VBP Program. We also sought and responded to public comments on issues that we should take into account when posting performance information on *Nursing Home Compare* or a successor Web site.

We propose to begin publishing SNF performance information under the SNF VBP Program on *Nursing Home Compare* not later than October 1, 2017. We will only publish performance information for which SNFs have had the opportunity to review and submit corrections. We welcome comments on this proposal.

d. Proposed Ranking of SNFs' Performance

We refer readers to the FY 2017 SNF PPS final rule (81 FR 52009) for discussion of the statutory requirement that we rank SNFs based on their

performance on the Program. In that rule, we discussed the statutory requirements to order SNF performance scores from low to high and publish those rankings on both the *Nursing Home Compare* and QualityNet Web sites, and to publish the ranking after August 1, 2018, when performance scores and value-based incentive payment adjustments will be made available to SNFs. We intend to publish the ranking for each program year once performance scores and value-based incentive payment adjustments are made available to SNFs.

Having considered those statutory requirements, we propose to rank SNFs for the FY 2019 program year and to publish the ranking after August 1, 2018. We further propose that the ranking include the following data elements:

- Rank,
- Provider ID,
- Facility name,
- Address,
- Baseline period (CY 2015) risk-standardized readmission rate,
- Performance period (CY 2017) risk-standardized readmission rate,
- Achievement score,
- Improvement score, and
- SNF performance score.

We believe that these data elements will provide consumers and other stakeholders with the necessary information to evaluate SNFs' performance under the program, including each component of the SNF performance score, including both achievement and improvement. We welcome public comments on these proposals. We will address rankings for future program years in subsequent rulemaking.

D. Survey Team Composition

1. Background

To participate in the Medicare and Medicaid programs, long term care facilities, including skilled nursing facilities (SNFs) in Medicare and nursing facilities (NFs) in Medicaid, must be certified as meeting Federal participation requirements, which are specified in 42 CFR part 483. Section 1864(a) of the Act authorizes the Secretary to enter into agreements with state survey agencies to determine whether SNFs meet the federal participation requirements for Medicare and section 1902(a)(33)(B) of the Act provides for state survey agencies to perform the same survey tasks for NFs participating or seeking to participate in the Medicaid program. We also conduct surveys directly and also contract out for certain surveys. The results of these

surveys are used by us and the Medicaid state agency as the basis for a determination to enter into, deny, or terminate a provider agreement with the facility, or to impose a remedy or remedies on a facility, as appropriate. To assess compliance with federal participation requirements, surveyors conduct onsite inspections (surveys) of facilities. In the survey process, surveyors gather evidence and directly observe the actual provision of care and services to residents and the effect or possible effects of that care to assess whether the care provided meets the assessed needs of individual residents.

Sections 1819(g) and 1919(g) of the Act, and corresponding regulations at 42 CFR part 488, subpart E, specify the requirements for the types and periodicity of surveys that are to be performed for each facility. Specifically, sections 1819(g)(2) and 1919(g)(2) of the Act reference standard, special, and extended surveys. Sections 1819(g)(2)(E) and 1919(g)(2)(E) of the Act specify that surveys under section 1819(g)(2) of the Act in general must consist of a multidisciplinary team of professionals, including a registered nurse. In addition, the statutory requirements governing the investigation of complaints and for monitoring on-site a SNF's or NF's compliance with participation requirements are found in sections 1819(g)(4) and 1919(g)(4) of the Act and § 488.332.

These sections specify that a specialized team, including an attorney, an auditor, and appropriate health care professionals may be maintained and utilized in the investigation of complaints for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against SNFs and NFs, respectively.

Consistent with the statutory provisions noted above, two separate regulations address survey team composition. The implementing regulation at § 488.314, Survey Teams, reflects the statutory language under sections 1819(g)(2)(E)(i) and 1919(g)(2)(E)(i) of the Act, and states that “[s]urvey teams must be conducted by an interdisciplinary team of professions, which must include a registered nurse.” The implementing regulation at § 488.332, investigation of complaints of violations and monitoring of compliance, reflects the statutory language under sections 1819(g)(4) and 1919(g)(4) of the Act, and states that the state survey agency may use a specialized team, which may include an attorney, auditor, and appropriate health professionals, but not necessarily a registered nurse, to investigate

complaints and conduct on-site monitoring. A survey conducted to monitor on-site a SNF's or NF's compliance with participation requirements, such as an on-site revisit survey to determine whether a noncompliant facility has achieved substantial compliance, is also subject to the provisions of § 488.332, and not § 488.314.

The regulation under § 488.308(e) also addresses complaint investigations, but as currently written, it combines special surveys, which are authorized under sections 1819(g)(2)(A)(iii)(II) and 1919(g)(2)(A)(iii)(II) of the Act, with the requirements associated with the investigations of complaints, which are governed by sections 1819(g)(4) and 1919(g)(4) of the Act. In the statute, "special surveys" are referenced at sections 1819(g)(2)(A)(iii)(II) and 1919(g)(2)(A)(iii)(II) of the Act, while the investigation of complaints is referenced at sections 1819(g)(4) and 1919(g)(4) of the Act.

The regulations as currently written do not clearly indicate which survey team requirement applies to complaint surveys. The language at § 488.314 could be broadly interpreted to cover the survey team composition for all surveys, including those used to investigate a complaint. Such an interpretation, however, would ignore the provisions of § 488.332, which allow a state survey agency to utilize a specialized investigative team that does not necessarily include a registered nurse to survey a facility in connection with a complaint investigation. The placement of surveys to investigate a complaint together with special surveys under § 488.308(e) further places into question which survey team requirement applies to complaint surveys. However, CMS' State Operations Manual (SOM) (Internet Only Manual Pub. 100-07) notes that "Section 488.332 provides the Federal regulatory basis for the investigation of complaints about nursing homes," thus indicating CMS' view that provisions related to survey team composition in § 488.332 apply to complaint surveys. See SOM, Ch. 5, Section 5300; see also SOM, Ch. 7, Sections 7203.5 and 7205.2(3).

The lack of clarity as to which regulatory provision, that is, § 488.314 or § 488.332, applies to the survey team composition related to the investigation of complaints has been the cause of recent administrative litigation. We thus believe that regulatory changes are needed to clarify that only surveys conducted under sections 1819(g)(2) and 1919(g)(2) of the Act are subject to the requirement at § 488.314 that a

survey team consist of an interdisciplinary team that must include a registered nurse. Complaint surveys and surveys related to on-site monitoring, including revisit surveys, are subject to the requirements of sections 1819(g)(4) and 1919(g)(4) of the Act and § 488.332, which allow the state survey agency to use a specialized investigative team that may include appropriate health care professionals but need not include a registered nurse.

2. Major Provisions

We propose to make changes to §§ 488.30, 488.301, 488.308, and 488.314 to clarify the regulatory requirements for team composition for surveys conducted for investigating a complaint and to align regulatory provisions for investigation of complaints with the statutory requirements found in sections 1819 and 1919 of the Act.

(1) Proposed revision of the definition of "complaint survey" under § 488.30 to add a provision stating that the requirements of sections 1819(g)(4) and 1919(g)(4) of the Act and § 488.332 apply to complaint surveys.

(2) Proposed revision of the definition of "abbreviated standard survey" under § 488.301 to clarify that abbreviated standard surveys conducted to investigate a complaint or to conduct on-site monitoring to verify compliance with participation requirements are subject to the requirements of § 488.332.

(3) Proposed relocation of the requirements included in § 488.308(e)(2) and (3) related to surveys conducted to investigate a complaint from under the heading "Special Surveys" to a new subsection, titled "Investigations of Complaints."

(4) Proposed revision of the language at § 488.314(a)(1) to specify that the team composition requirements at § 488.314(a)(1) apply only to surveys under sections 1819(g)(2) and 1919(g)(2) of the Act.

E. Proposal To Correct the Performance Period for the National Healthcare Safety Network (NHSN) Healthcare Personnel (HCP) Influenza Vaccination Immunization Reporting Measure in the End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP) for Payment Year (PY) 2020

In the CY 2017 ESRD PPS final rule (81 FR 77834), we finalized that the performance period for the NHSN Healthcare Personnel Influenza Vaccination Reporting Measure for Payment Year (PY) 2020 would be from October 1, 2016, through March 31, 2017 (81 FR 77915). We are proposing to revise that performance period so that

it aligns with the schedule we previously set for this measure. Specifically, we previously finalized that for the PY 2018 ESRD QIP, the performance period for this measure would be from October 1, 2015 through March 31, 2016, which is consistent with the length of the 2015–2016 influenza season (79 FR 66209), and that for the PY 2019 ESRD QIP, the performance period for this measure would be from October 1, 2016 through March 31, 2017, which is consistent with the length of the 2016–2017 influenza season (80 FR 69059–60). Maintaining the performance period we finalized in the CY 2017 ESRD PPS final rule would result in scoring facilities on the same data twice, and would not be consistent with our intended schedule to collect data on the measure in successive influenza seasons. Therefore, we are proposing to revise the performance period for the NHSN HCP Influenza Vaccination Reporting Measure for the PY 2020 ESRD QIP. Specifically, we are proposing that for the PY 2020 ESRD QIP, the performance period for this measure would be October 1, 2017, through March 31, 2018, which is consistent with the length of the 2017–2018 influenza season.

We seek comments on this proposal.

VI. Possible Burden Reduction in the Long-Term Care Requirements

A. Background

On October 4, 2016, we issued a final rule entitled, "Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities" (81 FR 68688). This final rule significantly revised the requirements that Long-Term Care (LTC) facilities must meet to participate in the Medicare and Medicaid programs. Prior to the final rule, the LTC requirements had not been comprehensively reviewed and updated since 1991 (56 FR 48826, September 26, 1991), despite substantial changes in service delivery in this setting. The final rule included revisions that reflect advances in the theory and practice of service delivery and safety. In addition, the various revisions sought to achieve broad-based improvements in the quality of health care provided in LTC facilities and in patient safety.

We received mixed reactions from stakeholders in response to our revision of the LTC requirements. Overall, stakeholders supported the regulation's focus towards person-centered care and agreed that reforms to the existing requirements were necessary to ensure high quality care and quality of life in LTC facilities. While supportive of the

goals of the regulation, stakeholders noted that the changes needed to comply with the revised requirements will be costly and burdensome. Given the scope of the revisions, stakeholder requests for more time to comply with the requirements, and the financial impact that the regulation will impose on LTC facilities, we finalized a phased-in implementation of the requirements over a 3 year time period in hopes of reducing some of the burden placed on LTC facilities. Readers may refer to the October 2016 final rule (81 FR 68696) for a detailed discussion regarding the implementation timeframes for the requirements.

B. Areas of Possible Burden Reduction

In a continued effort to further respond to stakeholder concerns, we are currently reviewing the LTC requirements to balance the need to maintain quality of care while reducing procedural burdens on facilities. Specifically, we are reviewing the requirements for obsolete or redundant provisions, areas where processes can be streamlined to reduce burden and cost, or other areas of possible elimination.

As a result of our review, we have identified the following areas of the LTC requirements that we are considering for modification or removal in an effort to reduce the burden and financial impact imposed on LTC facilities:

1. Grievance Process

In the October 2016 final rule, we finalized a proposal at § 483.10(j) to extensively expand the grievance process in LTC facilities and require facilities to establish a grievance policy to ensure the prompt resolution of grievances, and identify a grievance officer to oversee the process. In public comments on the proposed rule, stakeholders supported the enhancement of residents' rights to voice grievances and emphasized the importance and seriousness of resident concerns. However, stakeholders also indicated that the expansion of the requirements for a grievance process will be overly burdensome and costly. Specifically, stakeholders indicated that maintaining evidence related to grievances for 3 years is burdensome and unnecessary. Stakeholders were also concerned regarding the additional costs associated with staffing a grievance official to oversee the grievance process.

We are considering areas where we may reduce the burden of these requirements. For example, we may reduce the financial cost associated with maintaining records by reducing the

amount of time that they must be retained. We may also consider removing prescriptive language in the requirements regarding the specific duties of the grievance official and allow facilities greater flexibility in how they ensure that grievances are fully addressed. We are reviewing these requirements to determine whether any of the abuse and neglect reporting requirements may be duplicative of state law. In instances where these requirements may potentially be duplicative we may be able to remove them entirely and defer to existing law.

2. Quality Assurance and Performance Improvement (QAPI)

In the October 2016 final rule, we finalized a proposal at § 483.75 to require LTC facilities to develop, implement, and maintain an effective comprehensive, data-driven QAPI program that focuses on systems of care, outcomes of care and quality of life. Several stakeholders have indicated that our requirements are very detailed, too prescriptive, and significantly exceed the QAPI related requirements for other providers.

We are reviewing these requirements to determine if we can be less prescriptive while achieving a balance between specificity and flexibility in recognition of the diversity throughout LTC facilities. For example, in the areas of program design and scope we could propose to eliminate the detailed requirements regarding how the program must be designed and simply require facilities to design a program that is ongoing, comprehensive, and addresses the full range of care and services provided by the facility. Likewise, in the areas of program feedback, monitoring, and analysis we could eliminate the specific requirements for policies regarding exactly how a facility will determine underlying problems impacting systems in the facility, develop corrective actions, and monitor the effectiveness of its performance. We believe that such revisions will allow facilities greater flexibility in tailoring their QAPI program to fit the needs of their individual facility, eliminating unnecessary burden on facilities, while maintaining consistency with the requirements under section 1128I of the Act.

3. Discharge Notices

In the October 2016 final rule, we finalized a proposal at § 483.15(b)(3)(i) to require LTC facilities to send discharge notices to the state LTC Ombudsman. We are re-evaluating this requirement to determine if the process

is achieving intended objectives to reduce inappropriate involuntary discharges. In addition, we are concerned as to whether LTC Ombudsman have the capacity to receive and review these notices. We are soliciting comment as to whether LTC Ombudsman can handle receiving this material and to what extent they will use information once received.

C. Stakeholder Feedback

We are interested in receiving feedback regarding the realistic reduction in burden that these revisions may have on facilities and the possibility of unintended negative consequences that these potential revisions may impose on resident care and outcomes. We are also interested in receiving feedback regarding any additional areas of burden reduction and cost savings in LTC facilities. To the extent we proceed with rulemaking in this area, we will use this feedback and information to inform our policy decisions with regard to these issues. We invite general comment, but are particularly interested in data and analysis regarding associated costs and benefits.

VII. CMMI Solicitation

As the Center for Medicare and Medicaid Innovation (CMMI) continues developing models to test innovation and improvements to the Medicare program, we regularly engage with stakeholders to solicit ideas for models and concepts to test that have potential to improve the quality of care and reduce overall costs. CMMI authority affords us flexibility to test new ways of managing, delivering and paying for care for Medicare services. This flexibility includes utilizing waivers of statutory and regulatory requirements, such as waiving the qualifying 3-day inpatient hospital stay (QHS) requirement for skilled nursing facility (SNF) services, to allow the model participants to achieve the goals of the specific model. We are interested in receiving feedback on innovative concepts to potentially test in the post-acute care arena and key regulatory and statutory provisions that could be potentially waived if we were to implement any of these model tests. We encourage the submission of creative strategies that will accelerate changes to improve care and reduce costs for this important and often vulnerable population of beneficiaries who utilize post-acute services.

VIII. Request for Information on CMS Flexibilities and Efficiencies

CMS is committed to transforming the health care delivery system—and the Medicare program—by putting an additional focus on patient-centered care and working with providers, physicians, and patients to improve outcomes. We seek to reduce burdens for hospitals, physicians, and patients, improve the quality of care, decrease costs, and ensure that patients and their providers and physicians are making the best health care choices possible. These are the reasons we are including this Request for Information in this proposed rule.

As we work to maintain flexibility and efficiency throughout the Medicare program, we would like to start a national conversation about improvements that can be made to the health care delivery system that reduce unnecessary burdens for clinicians, other providers, and patients and their families. We aim to increase quality of care, lower costs, improve program integrity, and make the health care system more effective, simple and accessible.

We would like to take this opportunity to invite the public to submit their ideas for regulatory, subregulatory, policy, practice, and procedural changes to better accomplish these goals. Ideas could include payment system redesign, changes to conditions of participation, elimination or streamlining of reporting, monitoring and documentation requirements, aligning Medicare requirements and processes with those from Medicaid and other payers, operational flexibility, feedback mechanisms and data sharing that would enhance patient care, support of the physician-patient relationship in care delivery, and facilitation of individual preferences. Responses to this Request for Information could also include recommendations regarding when and how CMS issues regulations and policies and how CMS can simplify rules and policies for beneficiaries, clinicians, physicians, providers, and suppliers. Where practicable, data and specific examples would be helpful. If the proposals involve novel legal questions, analysis regarding CMS' authority is welcome for CMS' consideration. We are particularly interested in ideas for incentivizing organizations and the full range of relevant professionals and paraprofessionals to provide screening, assessment and evidence-based treatment for individuals with opioid use disorder and other substance use

disorders, including reimbursement methodologies, care coordination, systems and services integration, use of paraprofessionals including community paramedics and other strategies. We are requesting commenters to provide clear and concise proposals that include data and specific examples that could be implemented within the law.

We note that this is a Request for Information only. Respondents are encouraged to provide complete but concise responses. This Request for Information is issued solely for information and planning purposes; it does not constitute a Request for Proposal (RFP), applications, proposal abstracts, or quotations. This Request for Information does not commit the U.S. Government to contract for any supplies or services or make a grant award. Further, CMS is not seeking proposals through this Request for Information and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in response to this Request for Information; all costs associated with responding to this Request for Information will be solely at the interested party's expense. We note that not responding to this Request for Information does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this Request for Information announcement for additional information pertaining to this request. In addition, we note that CMS will not respond to questions about the policy issues raised in this Request for Information. CMS will not respond to comment submissions in response to this Request for Information in the FY 2018 SNF PPS final rule. Rather, CMS will actively consider all input as we develop future regulatory proposals or future subregulatory policy guidance. CMS may or may not choose to contact individual responders. Such communications would be for the sole purpose of clarifying statements in the responders' written responses. Contractor support personnel may be used to review responses to this Request for Information. Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this Request for Information may be used by the Government for program planning on a nonattribution basis. Respondents should not include any information that might be considered proprietary or confidential. This Request for Information should not be construed as

a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become U.S. Government property and will not be returned. CMS may publically post the public comments received, or a summary of those public comments.

IX. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), we are required to publish a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval.

To fairly evaluate whether an information collection should be approved by OMB, PRA section 3506(c)(2)(A) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our burden estimates.
- The quality, utility, and clarity of the information to be collected.
- Our effort to minimize the information collection burden on the affected public, including the use of automated collection techniques.

We are soliciting public comment on each of the section 3506(c)(2)(A)-required issues for the following information collection requirements (ICRs).

A. Proposed Information Collection Requirements (ICRs)

1. ICRs Regarding the SNF VBP Program

As discussed in the FY 2016 SNF PPS final rule (80 FR 46473) and the FY 2017 SNF PPS final rule (81 FR 52049 through 52050), we have specified claims-based measures to fulfill the SNF VBP Program's requirements. Because claims-based measures are calculated based on claims figures that are already submitted to the Medicare program for payment purposes, there is no additional respondent burden associated with data collection or submission for either the SNFRM or SNFPPR measures. Thus, there is no additional reporting burden associated with the SNF VBP Program's measures.

2. ICRs Regarding the Potentially Preventable 30-Day Post-Discharge Readmission Measure

We propose to modify the Potentially Preventable 30-Day Post-Discharge Readmission Measure by increasing the

length of the measurement period and updating the confidential feedback and public reporting dates, as described in section V.B.8. Since this is a claims-based measure, no data collection beyond the bills submitted in the normal course of business are required from providers for the calculation of this measure. Therefore, we believe the SNF QRP burden estimate is unaffected by the proposed modifications of this measure. The burden is unaffected since the proposed measure modifications have no impact on any of the reported data fields.

3. ICRs Regarding the Survey Team Composition

This regulation proposes to clarify the composition of a survey team. There is no new or additional burden associated with the proposed clarification.

4. ICRs Exempt From the PRA

As discussed elsewhere in this preamble, this rule proposes to adopt five new measures beginning with the FY 2020 SNF QRP (see section V.B.7. of this proposed rule), which would be calculated using data elements that are currently included in the MDS. The data elements are discrete questions and response codes that collect information on an IRF patient's health status, preferences, goals and general administrative information.

We are also proposing to require SNFs to report certain standardized patient assessment data beginning with the FY 2019 SNF QRP (see section V.B.10. of this proposed rule). We are proposing to define the term "standardized patient assessment data" as patient assessment questions and response options that are identical in all four PAC assessment instruments, and to which identical standards and definitions apply. The standardized patient assessment data is intended to be shared electronically among PAC providers and will otherwise enable the data to be comparable for various purposes, including the development of cross-setting quality measures and to inform payment models that take into account patient characteristics rather than setting.

Under section 1899B(m) of the Act, the Paperwork Reduction Act does not apply to the specific changes in the collections of information described in this proposed rule.

These changes to the collections of information arise from section 2(a) of the IMPACT Act, which added new section 1899B to the Act. That section requires SNFs to report standardized patient assessment data, data on quality measures, and data on resource use and

other measures. All of this data must, under section 1899B(a)(1)(B) of the Act, be standardized and interoperable to allow for its exchange among PAC providers and other providers and the use by such providers in order to provide access to longitudinal information to facilitate coordinated care and improved Medicare beneficiary outcomes. Section 1899B(a)(1)(C) of the Act requires us to modify the MDS to allow for the submission of quality measure data and standardized patient assessment data to enable its comparison across IRFs and other providers.

The five new measures that we are proposing to adopt are as follows: (1) Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury; (2) Application of the IRF Function Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633); (3) Application of IRF Function Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634); (4) Application of IRF Function Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (NQF #2635); and (5) Application of IRF Function Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (NQF #2636). We are also proposing that data for these new measures will be collected by SNFs and reported to CMS using the Resident Assessment Instrument, Minimum Data Set (MDS).

For the new measure "Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury" the items used to calculate the revised measure are already present on the MDS, so the adoption of this measure will not require SNFs to report new data elements. In addition, some data elements related to pressure ulcers have been identified as duplicative and we are proposing to remove them. Taking these proposals together, we estimate that there will be a 1.5 minute reduction in clinical staff time needed to report the pressure ulcer measure data. Based on the data provided in Table 24 of this proposed rule, and estimating 2,886,336 discharges from 15,447 SNFs annually, we also estimate that the total cost of reporting these data would be reduced by \$324 per SNF annually, or \$5,007,793 for all SNFs annually. We believe that the MDS items we are proposing would be completed by registered nurses.

For the four newly proposed functional outcome measures (NQF: #2633, #2634, #2635, and #2636), we note that although some of the data elements needed to calculate these

measures are currently included on the MDS, other data elements would need to be added to the MDS. As a result, we estimate that reporting these measures would require an additional 9 minutes of nursing and therapy staff time to report data on admission and 5.5 minutes of nursing and therapy time to report data on discharge, for an additional total of 14.5 minutes per stay. We estimate that the additional MDS items we are proposing will be completed by Registered Nurses for approximately 7 percent of the time, Occupational Therapists for approximately 41 percent of the time, and Physical Therapists for approximately 52 percent of the time. Individual providers determine the staffing resources necessary. With 2,886,336 discharges from 15,447 SNFs annually, we estimate that the reporting of the four functional outcome measures would impose on SNFs an additional burden of 697,531 total hours (2,886,336 discharges × 14.5 min/60) or 45.16 hours per SNF (697,531 hr/15,447 SNFs). Of the 14.5 minutes per stay, 1 minute of that time is for a Registered Nurse, 3.5 minutes is for an Occupational Therapist, and 4.5 minutes is for a Physical Therapist for a total of 9 minutes are required for admission. For discharge, 2.5 minutes are for an Occupational Therapist, and 3 minutes for a Physical Therapist for a total of 5.5 minutes. For one stay we estimate a cost of \$19.69 or, in aggregate, an annual cost of \$56,829,551. Per SNF, we estimate an annual cost of \$3,679. A summary of these estimates is provided in Table 24.

Section V.B.10 of this rule proposes to adopt 35 standardized patient assessment data elements beginning with the FY 2020 SNF QRP. Thirty-four of the proposed standardized data elements are already reported to CMS on the MDS for admissions, and one is newly proposed for the admission assessment. For the discharge assessment, there are 13 standardized data elements that are already reported to CMS on the MDS for discharge, 11 that are not applicable to the discharge assessment and 11 standardized patient assessment data elements that would be added to the discharge assessment. For those data elements already reported to CMS on the MDS (34 on the admission assessment and 13 on the discharge assessment), there will be no additional burden associated with these data elements. The data elements can be viewed on our Web site <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality->

Initiatives/IMPACT-Act-of-2014/IMPACT-Act-Downloads-and-Videos.html.

For the remaining twelve new data elements (one on the admission assessment and eleven on the discharge assessment), we estimate that these data elements will take 0.3 minutes of nursing/clinical staff time to report data on admission and 3.3 minutes of nursing/clinical staff time to report data on discharge, for a total of 3.6 minutes. We estimate that the additional data elements we are proposing will be completed by Registered Nurses for approximately 25 percent of the time and Licensed Vocational Nurses for approximately 75 percent of the time. Individual providers determine the staffing resources necessary. Estimating 2,886,336 discharges from 15,447 SNFs annually, this would equate to 173,180

total hours (2,886,336 discharges × 3.6 min/60) or 11.21 hours per SNF annually (173,180 hr/15,447 SNFs).

Of the 3.6 minutes per stay, 0.9 minute is allocated to the Registered Nurse and 2.7 minutes is allocated to the Licensed Vocational Nurse. For one stay we estimate a cost of \$2.98 or, in aggregate, an annual cost of \$8,605,322. Per SNF we estimate an annual cost of \$547.46. A summary of these estimates is provided in Table 24.

In summary, given the 1.5 minute reduction in burden associated with the new pressure ulcer measure and removal of duplicative pressure ulcer data elements, the additional 14.5 additional minutes of burden for the functional outcome measures, and the 3.6 additional minutes of burden for the proposed standardized data elements, the overall cost associated with

proposed changes to the SNF QRP is estimated at an additional \$3,912 per SNF annually, or \$60,427,080 for all SNFs annually. A summary of these estimates is provided in Table 24.

Under section 1899B(m) of the Act, the Paperwork Reduction Act does not apply to the specific changes to the collections of information described in this proposed rule. We are, however, setting out the burden as a courtesy to advise interested parties of the proposed actions' time and costs and for reference refer to section XI.A of this proposed rule of the regulatory impact analysis (RIA). The requirement and burden will be submitted to OMB for review and approval when the modifications to the MDS have achieved standardization and are no longer exempt from the requirements under section 1899B(m) of the Act.

TABLE 24—CALCULATION OF COST

QRP QM	Data elements	Minutes	Aggregate annual hours all SNFs	Hours per SNF annually	Dollars per stay	Aggregate annual cost all SNFs	Annual cost per SNF
Functional Outcome Measures	18	14.5	697,531	45.16	\$19.69	\$56,829,551	\$3,679
Standardized Data Elements	12	3.6	173,180	11.21	2.98	8,605,322	557
Changes in Skin Integrity	(3)	(1.5)	(72,158)	(4.67)	(1.74)	(5,007,793)	(324)
Total	27	17	798,553	52	21	60,427,080	3,912

Number of Skilled Nursing Facilities = 15,447.

Number of Discharges = 2,886,336.

B. Submission of PRA-Related Comments

We have submitted a copy of this NPRM to OMB for its review of the rule's information collection and recordkeeping requirements. The requirements are not effective until they have been approved by OMB.

We invite public comments on these information collection requirements. If you wish to comment, please identify the rule (CMS-1679-P) and, where applicable, the preamble section, and the ICR section.

See this rule's **DATES** and **ADDRESSES** sections for the comment due date and for additional instructions.

X. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

XI. Economic Analyses

A. Regulatory Impact Analysis

1. Introduction

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA, September 19, 1980, Pub. L. 96-354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA, March 22, 1995; Pub. L. 104-4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated an economically significant rule, under section 3(f)(1) of Executive Order 12866. Accordingly, we have prepared a regulatory impact analysis (RIA) as further discussed below. Also, the rule has been reviewed by OMB.

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment, or otherwise promulgates, a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs

associated with at least two prior regulations. OMB's implementation guidance, issued on April 5, 2017, explains that "Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries (for example, regulations associated with . . . Medicare spending) are considered 'transfer rules' and are not covered by EO 13771 However . . . such regulatory actions may impose requirements apart from transfers In those cases, the actions would need to be offset to the extent they impose more than de minimis costs. Examples of ancillary requirements that may require offsets include new reporting or recordkeeping requirements." The implications of the rule's costs and cost savings will be further considered in the context of our compliance with Executive Order 13771.

2. Statement of Need

This proposed rule would update the FY 2017 SNF prospective payment rates as required under section 1888(e)(4)(E) of the Act. It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to provide for publication in the **Federal Register** before the August 1 that precedes the start of each FY, the unadjusted federal per diem rates, the case-mix classification system, and the factors to be applied in making the area wage adjustment. As these statutory provisions prescribe a detailed methodology for calculating and disseminating payment rates under the SNF PPS, we do not have the discretion to adopt an alternative approach on these issues.

3. Overall Impacts

This proposed rule sets forth proposed updates of the SNF PPS rates contained in the SNF PPS final rule for FY 2017 (81 FR 51970). Based on the above, we estimate that the aggregate impact would be an increase of \$390 million in payments to SNFs in FY 2018, resulting from the SNF market basket update to the payment rates, as required by section 1888(e)(5)(B)(iii) of the Act. Although the best data available are utilized, there is no attempt to

predict behavioral responses to these changes, or to make adjustments for future changes in such variables as days or case-mix.

We would note that events may occur to limit the scope or accuracy of our impact analysis, as this analysis is future-oriented, and thus, very susceptible to forecasting errors due to events that may occur within the assessed impact time period.

In accordance with sections 1888(e)(4)(E) and 1888(e)(5) of the Act, if not for the enactment of section 411(a) of MACRA (as discussed in section III.B of this proposed rule), we would update the FY 2017 payment rates by a factor equal to the market basket index percentage change adjusted by the MFP adjustment to determine the payment rates for FY 2018. As discussed previously, section 1888(e)(5)(B)(iii) of the Act establishes a special rule for FY 2018 requiring the market basket percentage used to update the federal SNF PPS rates to be equal to 1.0 percent. The impact to Medicare is included in the total column of Table 25. In updating the SNF PPS rates for FY 2018, we made a number of standard annual revisions and clarifications mentioned elsewhere in this proposed rule (for example, the update to the wage and market basket indexes used for adjusting the federal rates).

The annual update set forth in this proposed rule applies to SNF PPS payments in FY 2018. Accordingly, the analysis of the impact of the annual update that follows only describes the impact of this single year. Furthermore, in accordance with the requirements of the Act, we will publish a rule or notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

4. Detailed Economic Analysis

The FY 2018 SNF PPS payment impacts appear in Table 25. Using the most recently available data, in this case FY 2016, we apply the current FY 2017 wage index and labor-related share value to the number of payment days to simulate FY 2017 payments. Then, using the same FY 2016 data, we apply

the proposed FY 2018 wage index and labor-related share value to simulate FY 2018 payments. We tabulate the resulting payments according to the classifications in Table 25 (for example, facility type, geographic region, facility ownership), and compare the simulated FY 2017 payments to the simulated FY 2018 payments to determine the overall impact. The breakdown of the various categories of data in the table follows:

- The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, census region, and ownership.
- The first row of figures describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The next nineteen rows show the effects on facilities by urban versus rural status by census region. The last three rows show the effects on facilities by ownership (that is, government, profit, and non-profit status).
- The second column shows the number of facilities in the impact database.
- The third column shows the effect of the annual update to the wage index. This represents the effect of using the most recent wage data available. The total impact of this change is zero percent; however, there are distributional effects of the change.
- The fourth column shows the effect of all of the changes on the FY 2018 payments. The update of 1.0 percent is constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will increase by 1.0 percent, assuming facilities do not change their care delivery and billing practices in response.

As illustrated in Table 25, the combined effects of all of the changes vary by specific types of providers and by location. For example, due to changes proposed in this rule, providers in the urban Pacific region would experience a 1.5 percent increase in FY 2018 total payments.

TABLE 25—PROJECTED IMPACT TO THE SNF PPS FOR FY 2018

	Number of facilities FY 2018	Update wage data (%)	Total change (%)
Group:			
Total	15,447	0.0	1.0
Urban	10,992	0.1	1.1
Rural	4,455	-0.6	0.4
Hospital-based urban	517	0.2	1.2
Freestanding urban	10,475	0.1	1.1

TABLE 25—PROJECTED IMPACT TO THE SNF PPS FOR FY 2018—Continued

	Number of facilities FY 2018	Update wage data (%)	Total change (%)
Hospital-based rural	575	-0.7	0.3
Freestanding rural	3,880	-0.6	0.4
Urban by region:			
New England	791	0.2	1.2
Middle Atlantic	1,485	0.4	1.4
South Atlantic	1,867	-0.2	0.8
East North Central	2,117	0.0	1.0
East South Central	551	-0.6	0.4
West North Central	919	0.4	1.4
West South Central	1,333	0.1	1.1
Mountain	509	-0.2	0.8
Pacific	1,415	0.5	1.5
Outlying	5	-1.9	-0.9
Rural by region:			
New England	137	1.5	2.6
Middle Atlantic	215	-0.4	0.6
South Atlantic	502	-0.7	0.3
East North Central	934	-1.1	-0.2
East South Central	527	-0.9	0.1
West North Central	1,077	-0.3	0.7
West South Central	737	-0.8	0.2
Mountain	228	-0.4	0.6
Pacific	98	0.2	1.2
Ownership:			
Profit	10,805	0.0	1.0
Non-profit	3,590	0.0	1.0
Government	1,052	-0.3	0.7

Note: The Total column includes the 1.0 percent market basket increase required by section 1888(e)(5)(B)(iii) of the Act. Additionally, we found no SNFs in rural outlying areas.

5. Estimated Impacts for the SNF QRP

Estimated impacts for the SNF QRP are based on analysis discussed in section V.B. of this proposed rule. For the 1.5 minute reduction in burden associated with the new pressure ulcer

measure and the removal of duplicative pressure ulcer data elements, the additional 14.5 additional minutes of burden for the functional outcome measures, and the 3.6 additional minutes of burden for the proposed standardized data elements, the overall

cost associated with proposed changes to the SNF QRP is estimated at an additional \$3,912 per SNF annually, or \$60,427,080 for all SNFs annually. A summary of these estimates is provided in Table 26.

TABLE 26—CALCULATION OF COST PER QUALITY MEASURE

QRP QM	Data elements	Minutes	Aggregate annual hours all SNFs	Hours per SNF annually	Dollars per stay	Aggregate annual cost all SNFs	Annual cost per SNF
Functional Outcome Measures	18	14.5	697,531	45.16	\$19.69	\$56,829,551	\$3,679
Standardized Data Elements	12	3.6	173,180	11.21	2.98	8,605,322	557
Changes in Skin Integrity	(3)	(1.5)	(72,158)	(4.67)	(1.74)	(5,007,793)	(324)
Total	27	17	798,553	52	21	60,427,080	3,912

Number of Skilled Nursing Facilities = 15,447.

Number of Discharges = 2,886,336.

6. Estimated Impacts for the SNF VBP Program

Estimated impacts of the FY 2019 SNF VBP Program are based on historical data that appear in Table 27. We modeled SNFs' performance in the Program using SNFRM data from CY 2013 as the baseline period and CY 2015 as the performance period. Additionally, we modeled a logistic

exchange function with a payback percentage of 60 percent, as discussed further in the preamble to this proposed rule.

As illustrated in Table 27, the effects of the SNF VBP Program vary by specific types of providers and by location. For example, we estimate that rural SNFs perform better on the SNFRM, on average, compared to urban SNFs. Similarly, we estimate that non-

profit SNFs perform better on the SNFRM compared to for-profit SNFs, and that government-owned SNFs perform better still. We also estimate that smaller SNFs (measured by bed size) tend to perform better, on average, compared to larger SNFs. (We note that the risk-standardized readmission rates presented below are *not* inverted; that is, lower rates represent better performance).

These differences in performance on the SNFRM result in differences in value-based incentive payment percentages computed by the Program. For example, we estimate that, at the proposed 60 percent payback percentage, SNFs in urban areas would receive a 1.161 percent incentive

multiplier, on average, in FY 2019, while SNFs in rural areas would receive a slightly higher incentive multiplier of 1.227 percent, on average. Additionally, SNFs in the smallest 25 percent as measured by bed size would receive an incentive multiplier of 1.203 percent, on average, while SNFs in the 2nd quartile

as measured by bed size would receive an incentive multiplier of 1.166 percent, on average. We note that the multipliers that we have listed in Table 27 are applied to SNFs' adjusted Federal per diem rates *after* application of the 2 percent reduction to those rates required by statute.

TABLE 27—ESTIMATED FY 2019 SNF VBP PROGRAM IMPACTS

Category	Criterion	Number of facilities	RSRR (mean)	Mean incentive multiplier (60% payback)	Percent of proposed payback
Group	Total	15,746	0.19061	1.218	100.0
	Urban	11,116	0.18790	1.161	83.5
	Rural	4,630	0.18293	1.227	16.5
Urban by Region	Total	11,116			
	01=Boston	808	0.18734	1.165	5.978
	02=New York	922	0.18848	1.116	10.590
	03=Philadelphia	1,132	0.18611	1.307	10.295
	04=Atlanta	1,890	0.19291	1.025	12.443
	05=Chicago	2,330	0.18728	1.213	16.248
	06=Dallas	1,379	0.19131	0.920	6.126
	07=Kansas City	666	0.18764	1.109	2.815
	08=Denver	323	0.17831	1.644	2.879
	09=San Francisco	1,325	0.18518	1.174	12.107
	10=Seattle	341	0.17634	1.765	3.983
Rural by Region	Total	4,630			
	01=Boston	145	0.17458	1.648	1.009
	02=New York	94	0.17746	1.435	0.409
	03=Philadelphia	287	0.18145	1.231	1.431
	04=Atlanta	918	0.18633	1.011	3.363
	05=Chicago	1,127	0.18156	1.361	4.662
	06=Dallas	814	0.18676	0.926	1.824
	07=Kansas City	801	0.18459	1.291	1.575
	08=Denver	284	0.17596	1.570	0.883
	09=San Francisco	68	0.16620	1.650	0.706
	10=Seattle	92	0.17488	1.569	0.670
Ownership Type	Total	15,746			
	Government	1,096	0.17844	1.240	4.601
	Profit	10,973	0.18864	1.113	71.137
	Non-Profit	3,677	0.18225	1.364	24.260
No. of Beds:	1st Quartile:	3,986	0.17935	1.203	13.393
	2nd Quartile:	3,937	0.18646	1.166	19.738
	3rd Quartile:	3,887	0.19009	1.148	26.388
	4th Quartile:	3,938	0.19000	1.204	40.481

7. Alternatives Considered

As described in this section, we estimate that the aggregate impact for FY 2018 under the SNF PPS would be an increase of \$390 million in payments to SNFs, resulting from the SNF market basket update to the payment rates, as required by section 1888(e)(5)(B)(iii) of the Act.

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating base payment rates under the SNF PPS, and does not provide for the use of any alternative methodology.

It specifies that the base year cost data to be used for computing the SNF PPS payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995). In accordance with the statute, we also incorporated a number of elements into the SNF PPS (for example, case-mix classification methodology, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the federal rates). Further, section 1888(e)(4)(H) of the Act specifically requires us to disseminate the payment rates for each new FY through the **Federal Register**, and to do so before the August 1 that precedes the start of the new FY; accordingly, we are not pursuing alternatives for this process.

8. Accounting Statement

As required by OMB Circular A-4 (available online at www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf), in Table 28, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule for FY 2018. Table 28 provides our best estimate of the possible changes in Medicare payments under the SNF PPS as a result of the policies in this proposed rule, based on the data for 15,447 SNFs in our database and the cost for the SNF QRP of implementing the IMPACT Act.

TABLE 28—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2017 SNF PPS FISCAL YEAR TO THE 2018 SNF PPS FISCAL YEAR

Category	Transfers
Annualized Monetized Transfers	\$390 million.*
From Whom To Whom?	Federal Government to SNF Medicare Providers.
FY 2018 Cost to Updating the Quality Reporting Program	
Category	Costs
Cost for SNFs to Submit Data for the Quality Reporting Program	\$60 million.

* The net increase of \$390 million in transfer payments is a result of the market basket increase of \$390 million.

9. Conclusion

This proposed rule sets forth updates of the SNF PPS rates contained in the SNF PPS final rule for FY 2017 (81 FR 51970). Based on the above, we estimate the overall estimated payments for SNFs in FY 2018 are projected to increase by \$390 million, or 1.0 percent, compared with those in FY 2017. We estimate that in FY 2018 under RUG–IV, SNFs in urban and rural areas would experience, on average, a 1.1 percent increase and 0.4 percent increase, respectively, in estimated payments compared with FY 2017. Providers in the rural New England region would experience the largest estimated increase in payments of approximately 2.6 percent. Providers in the urban Outlying region would experience the largest estimated decrease in payments of 0.9 percent.

Additionally, § 488.314 regarding survey team composition implements section 1819(g)(4) of the Act and provides that States may maintain and utilize a specialized team that need not include a registered nurse for the investigation of complaints. Section 1919 of the Act contains the same statutory language as applicable to Nursing Facilities (NFs). The regulations in part 488 were originally established under the authority of the sections 1819 and 1919 of the Act, which were added by the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) (Pub. L. 100–203, enacted on December 22, 1987) and further amendments to OBRA 87 by subsequent 1988, 1989, and 1990 legislation.

Sections 4204(b) and 4214(d) of OBRA 87 pertain to skilled nursing facilities (SNFs) and nursing facilities (NFs), respectively, and provide for a waiver of PRA requirements for the regulations that implement the OBRA '87 requirements. The provisions of OBRA 87 that exempt agency actions to collect information from states or facilities relevant to survey and enforcement activities from the PRA are not time-limited.

B. Regulatory Flexibility Act Analysis

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, non-profit organizations, and small governmental jurisdictions. Most SNFs and most other providers and suppliers are small entities, either by reason of their non-profit status or by having revenues of \$27.5 million or less in any 1 year. We utilized the revenues of individual SNF providers (from recent Medicare Cost Reports) to classify a small business, and not the revenue of a larger firm with which they may be affiliated. As a result, we estimate approximately 97 percent of SNFs are considered small businesses according to the Small Business Administration's latest size standards (NAICS 623110), with total revenues of \$27.5 million or less in any 1 year. (For details, see the Small Business Administration's Web site at <http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/eligibility-size-standards>). In addition, approximately 23 percent of SNFs classified as small entities are non-profit organizations. Finally, individuals and states are not included in the definition of a small entity.

This proposed rule sets forth updates of the SNF PPS rates contained in the SNF PPS final rule for FY 2017 (81 FR 51970). Based on the above, we estimate that the aggregate impact for FY 2018 would be an increase of \$390 million in payments to SNFs, resulting from the SNF market basket update to the payment rates. While it is projected in Table 25 that most providers would experience a net increase in payments, we note that some individual providers within the same region or group may experience different impacts on payments than others due to the distributional impact of the FY 2018 wage indexes and the degree of Medicare utilization.

Guidance issued by the Department of Health and Human Services on the proper assessment of the impact on small entities in rulemakings, utilizes a cost or revenue impact of 3 to 5 percent as a significance threshold under the RFA. In their March 2017 Report to Congress (available at http://medpac.gov/docs/default-source/reports/mar17_medpac_ch8.pdf), MedPAC states that Medicare covers approximately 11 percent of total patient days in freestanding facilities and 21 percent of facility revenue (March 2017 MedPAC Report to Congress, 202). As a result, for most facilities, when all payers are included in the revenue stream, the overall impact on total revenues should be substantially less than those impacts presented in Table 25. As indicated in Table 25, the effect on facilities is projected to be an aggregate positive impact of 1.0 percent for FY 2018. As the overall impact on the industry as a whole, and thus on small entities specifically, is less than the 3 to 5 percent threshold discussed previously, the Secretary has determined that this proposed rule would not have a significant impact on a substantial number of small entities for FY 2018.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an MSA and has fewer than 100 beds. This proposed rule would affect small rural hospitals that (1) furnish SNF services under a swing-bed agreement or (2) have a hospital-based SNF. We anticipate that the impact on small rural hospitals would be similar to the impact on SNF providers overall. Moreover, as noted in previous SNF PPS final rules (most recently, the one for FY 2017 (81 FR 51970)), the category of small rural

hospitals would be included within the analysis of the impact of this proposed rule on small entities in general. As indicated in Table 25, the effect on facilities for FY 2018 is projected to be an aggregate positive impact of 1.0 percent. As the overall impact on the industry as a whole is less than the 3 to 5 percent threshold discussed above, the Secretary has determined that this proposed rule would not have a significant impact on a substantial number of small rural hospitals for FY 2018.

C. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2017, that threshold is approximately \$148 million. This proposed rule will impose no mandates on state, local, or tribal governments or on the private sector.

D. Federalism Analysis

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. This proposed rule would have no substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.

E. Congressional Review Act

This proposed regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

F. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on last year's proposed rule will be the number of reviewers of this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all

commenters reviewed last year's rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we thought that the number of past commenters would be a fair estimate of the number of reviewers of this rule. We welcome any comments on the approach in estimating the number of entities which will review this proposed rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule. We seek comments on this assumption.

Using the wage information from the BLS for medical and health service managers (Code 11-9111), we estimate that the cost of reviewing this rule is \$90.16 per hour, including overhead and fringe benefits https://www.bls.gov/oes/2015/may/naics4_621100.htm. Assuming an average reading speed, we estimate that it would take approximately 4 hours for the staff to review half of this proposed rule. For each SNF that reviews the rule, the estimated cost is \$361 (4 hours × \$90.16). Therefore, we estimate that the total cost of reviewing this regulation is \$34,295 (\$361 × 95 reviewers).

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 411

Diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 409—HOSPITAL INSURANCE BENEFITS

- 1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

- 2. Section 409.30 is amended by revising the introductory text to read as follows:

§ 409.30 Basic requirements.

Posthospital SNF care, including SNF-type care furnished in a hospital or CAH that has a swing-bed approval, is covered only if the beneficiary meets the requirements of this section and only for days when he or she needs and receives care of the level described in § 409.31. A beneficiary in an SNF is also considered to meet the level of care requirements of § 409.31 up to and including the assessment reference date for the 5-day assessment prescribed in § 413.343(b) of this chapter, when correctly assigned one of the case-mix classifiers that CMS designates for this purpose as representing the required level of care. For the purposes of this section, the assessment reference date is defined in accordance with § 483.315(d) of this chapter, and must occur no later than the eighth day of posthospital SNF care.

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

- 3. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102, 1860D–1 through 1860D–42, 1871, and 1877 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, 1395hh, and 1395nn).

- 4. Section 411.15 is amended by revising paragraph (p)(3)(iii) to read as follows:

§ 411.15 Particular services excluded from coverage.

* * * * *

(p) * * *

(3) * * *

(iii) The beneficiary receives outpatient services from a Medicare-participating hospital or CAH (but only for those services that CMS designates as being beyond the general scope of SNF comprehensive care plans, as required under § 483.21(b) of this chapter); or

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES; PAYMENT FOR ACUTE KIDNEY INJURY DIALYSIS

■ 5. The authority citation for part 413 continues to read as follows:

Authority: 42 U.S.C. 1302; 42 U.S.C. 1395d(d); 42 U.S.C. 1395f(b); 42 U.S.C. 1395g; 42 U.S.C. 1395l(a), (i), and (n); 42 U.S.C. 1395x(v); 42 U.S.C. 1395hh; 42 U.S.C. 1395rr; 42 U.S.C. 1395tt; 42 U.S.C. 1395ww; sec. 124 of Public Law 106–113, 113 Stat. 1501A–332; sec. 3201 of Public Law 112–96, 126 Stat. 156; sec. 632 of Public Law 112–240, 126 Stat. 2354; sec. 217 of Public Law 113–93, 129 Stat. 1040; sec. 204 of Public Law 113–295, 128 Stat. 4010; and sec. 808 of Public Law 114–27, 129 Stat. 362.

■ 6. The heading for part 413 is revised to read as set forth above.

■ 7. Section 413.333 is amended by revising the definition of “Resident classification system” to read as follows:

§ 413.333 Definitions.

* * * * *

Resident classification system means a system for classifying SNF residents into mutually exclusive groups based on clinical, functional, and resource-based criteria. For purposes of this subpart, this term refers to the current version of the resident classification system, as set forth in the annual publication of Federal prospective payment rates described in § 413.345.

* * * * *

■ 8. Section 413.337 is amended by adding paragraph (d)(4) to read as follows:

§ 413.337 Methodology for calculating the prospective payment rates.

* * * * *

(d) * * *

(4) *Penalty for failure to report quality data.* For fiscal year 2018 and subsequent fiscal years—

(i) In the case of a SNF that does not meet the requirements in § 413.360, for a fiscal year, the SNF market basket index percentage change for the fiscal year (as specified in paragraph (d)(1)(v) of this section, as modified by any applicable forecast error adjustment under paragraph (d)(2) of this section, reduced by the MFP adjustment specified in paragraph (d)(3) of this section, and as specified for FY 2018 in section 1888(e)(5)(B)(iii) of the Act), is further reduced by 2.0 percentage points.

(ii) The application of the 2.0 percentage point reduction specified in

paragraph (d)(4)(i) of this section to the SNF market basket index percentage change may result in such percentage being less than zero for a fiscal year, and may result in payment rates for that fiscal year being less than such payment rates for the preceding fiscal year.

(iii) Any 2.0 percentage point reduction applied pursuant to paragraph (d)(4)(i) of this section will apply only to the fiscal year involved and will not be taken into account in computing the payment amount for a subsequent fiscal year.

* * * * *

■ 9. Section 413.338 is added to read as follows:

§ 413.338 Skilled Nursing Facility Value-Based Purchasing.

(a) *Definitions.* (1) *Achievement threshold (or achievement performance standard)* means the 25th percentile of SNF performance on the SNF readmission measure during the baseline period for a fiscal year.

(2) *Adjusted Federal per diem rate* means the payment made to SNFs under the skilled nursing facility prospective payment system (as described under section 1888(e)(4)(G) of the Act).

(3) *Applicable percent* means for FY 2019 and subsequent fiscal years, 2.0 percent.

(4) *Baseline period* means the time period used to calculate the achievement threshold, benchmark and improvement threshold that apply for a fiscal year.

(5) *Benchmark* means, for a fiscal year, the arithmetic mean of the top decile of SNF performance on the SNF readmission measure during the baseline period for that fiscal year.

(6) *Logistic exchange function* means the function used to translate a SNF's performance score on the SNF readmission measure into a value-based incentive payment percentage.

(7) *Improvement threshold (or improvement performance standard)* means an individual SNF's performance on the SNF readmission measure during the applicable baseline period.

(8) *Performance period* means the time period during which performance on the SNF readmission measure is calculated for a fiscal year.

(9) *Performance standards* are the levels of performance that SNFs must meet or exceed to earn points under the SNF VBP Program for a fiscal year, and are announced no later than 60 days prior to the start of the performance period that applies to the SNF readmission measure for that fiscal year.

(10) *Ranking* means the ordering of SNFs based on each SNF's performance

score under the SNF VBP Program for a fiscal year.

(11) *SNF readmission measure* means, for a fiscal year, the all-cause all-condition hospital readmission measure (SNFRM) or the all-condition risk-adjusted potentially preventable hospital readmission rate (SNFPPR) specified by CMS for application in the SNF Value-Based Purchasing Program.

(12) *Performance score* means the numeric score ranging from 0 to 100 awarded to each SNF based on its performance under the SNF VBP Program for a fiscal year.

(13) *SNF Value-Based Purchasing (VBP) Program* means the program required under section 1888(h) of the Social Security Act.

(14) *Value-based incentive payment amount* is the portion of a SNF's adjusted Federal per diem rate that is attributable to the SNF VBP Program.

(15) *Value-based incentive payment adjustment factor* is the number that will be multiplied by the adjusted Federal per diem rate for services furnished by a SNF during a fiscal year, based on its performance score for that fiscal year, and after such rate is reduced by the applicable percent.

(b) *Applicability of the SNF VBP Program.* The SNF VBP Program applies to SNFs, including facilities described in section 1888(e)(7)(B).

(c) *Process for reducing the adjusted Federal per diem rate and applying the value-based incentive payment adjustment factor under the SNF VBP Program—*(1) *General.* CMS will make value-based incentive payments to each SNF based on its performance score for a fiscal year under the SNF VBP Program under the requirements and conditions specified in this paragraph.

(2) *Value-based incentive payment amount—*(i) *Available amount.* The total amount available for value-based incentive payments for a fiscal year is equal to 60 percent of the total amount of the reduction to the adjusted SNF PPS payments for that fiscal year, as estimated by CMS.

(ii) *Calculation of the value-based incentive payment amount.* The value-based incentive payment amount is calculated by multiplying the adjusted Federal per diem rate by the value-based incentive payment adjustment factor, after the adjusted Federal per diem rate has been reduced by the applicable percent.

(iii) *Calculation of the value-based incentive payment adjustment factor.* The value-based incentive payment adjustment factor calculated by estimating Medicare spending under the skilled nursing facility prospective payment system to estimate the total

amount available for value-based incentive payments, ordering SNFs by their SNF performance scores, then assigning an adjustment factor value for each performance score subject to the limitations set by the exchange function.

(iv) *Reporting of adjustment to SNF payments.* CMS will inform each SNF of the value-based incentive payment adjustment factor that will be applied to its adjusted Federal per diem rate for services furnished during a fiscal year at least 60 days prior to the start of that fiscal year.

(d) *Performance scoring under the SNF VBP Program.* (1) CMS will award points to SNFs based on their performance on the SNF readmission measure applicable to a fiscal year during the performance period applicable to that fiscal year as follows:

(i) CMS will award from 1 to 99 points for achievement to each SNF whose performance meets or exceeds the achievement threshold but is less than the benchmark.

(ii) CMS will award from 0 to 90 points for improvement to each SNF whose performance exceeds the improvement threshold but is less than the benchmark.

(iii) CMS will award 100 points to a SNF whose performance meets or exceeds the benchmark.

(2) The highest of the SNF's achievement, improvement and benchmark score will be the SNF's performance score for the fiscal year.

(e) *Confidential feedback reports and public reporting.* (1) Beginning October 1, 2016, CMS will provide quarterly confidential feedback reports to SNFs on their performance on the SNF readmission measure. SNFs will have the opportunity to review and submit corrections for this data by March 31st following the date that CMS provides the reports. Any such correction requests must be accompanied by appropriate evidence showing the basis for the correction.

(2) Beginning not later than 60 days prior to each fiscal year, CMS will provide SNF performance score reports to SNFs on their performance under the SNF VBP Program for a fiscal year. SNFs will have the opportunity to review and submit corrections to their SNF performance scores and ranking contained in these reports for 30 days following the date that CMS provides the reports. Any such correction requests must be accompanied by appropriate evidence showing the basis for the correction.

(3) CMS will publicly report the information described in paragraphs (e)(1) and (2) of this section on the Nursing Home Compare Web site.

(f) *Limitations on review.* There is no administrative or judicial review of the following:

(1) The methodology used to determine the value-based incentive payment percentage and the amount of the value-based incentive payment under section 1888(h)(5) of the Act.

(2) The determination of the amount of funding available for value-based incentive payments under section 1888(h)(5)(C)(ii)(III) of the Act and the payment reduction under section 1888(h)(6) of the Act.

(3) The establishment of the performance standards under section 1888(h)(3) of the Act and the performance period.

(4) The methodology developed under section 1888(h)(4) of the Act that is used to calculate SNF performance scores and the calculation of such scores.

(5) The ranking determinations under section 1888(h)(4)(B) of the Act.

■ 10. Section 413.345 is revised to read as follows:

§ 413.345 Publication of Federal prospective payment rates.

CMS publishes information pertaining to each update of the Federal payment rates in the **Federal Register**. This information includes the standardized Federal rates, the resident classification system that provides the basis for case-mix adjustment, and the factors to be applied in making the area wage adjustment. This information is published before May 1 for the fiscal year 1998 and before August 1 for the fiscal years 1999 and after.

■ 11. Section 413.360 is added to subpart J to read as follows:

§ 413.360 Requirements under the Skilled Nursing Facility (SNF) Quality Reporting Program (QRP).

(a) *Participation start date.* Beginning with the FY 2018 program year, a SNF must begin reporting data in accordance with paragraph (b) of this section no later than the first day of the calendar quarter subsequent to 30 days after the date on its CMS Certification Number (CCN) notification letter, which designates the SNF as operating in the Certification and Survey Provider Enhanced Reports (CASPER) system. For purposes of this section, a program year is the fiscal year in which the market basket percentage described in § 413.337(d) is reduced by two percentage points if the SNF does not report data in accordance with paragraph (b) of this section.

(b) *Data submission requirement.* (1) Except as provided in paragraph (c) of this section, and for a program year, SNFs must submit to CMS data on

measures specified under sections 1899B(c)(1) and 1899B(d)(1) of the Act and standardized resident assessment data in accordance with section 1899B(b)(1) of the Act, in the form and manner, and at a time, specified by CMS.

(2) CMS will consider a SNF to have complied with paragraph (b)(1) of this section for a program year if the SNF reports: 100 percent of the required data elements on at least 80 percent of the MDS assessments submitted for that program year.

(c) *Exception and extension requests.* (1) A SNF may request and CMS may grant exceptions or extensions to the reporting requirements under paragraph (b) of this section for one or more quarters, when there are certain extraordinary circumstances beyond the control of the SNF.

(2) A SNF may request an exception or extension within 90 days of the date that the extraordinary circumstances occurred by sending an email to SNFQRPreconsiderations@cms.hhs.gov that contains all of the following information:

(i) SNF CMS Certification Number (CCN).

(ii) SNF Business Name.

(iii) SNF Business Address.

(iv) CEO or CEO-designated personnel contact information including name, telephone number, title, email address, and mailing address. (The address must be a physical address, not a post office box.)

(v) SNF's reason for requesting the exception or extension.

(vi) Evidence of the impact of extraordinary circumstances, including, but not limited to, photographs, newspaper, and other media articles.

(vii) Date when the SNF believes it will be able to again submit SNF QRP data and a justification for the proposed date.

(3) Except as provided in paragraph (c)(4) of this section, CMS will not consider an exception or extension request unless the SNF requesting such exception or extension has complied fully with the requirements in this paragraph (c).

(4) CMS may grant exceptions or extensions to SNFs without a request if it determines that one or more of the following has occurred:

(i) An extraordinary circumstance affects an entire region or locale.

(ii) A systemic problem with one of CMS's data collection systems directly affected the ability of a SNF to submit data in accordance with paragraph (b) of this section.

(d) *Reconsideration.* (1) SNFs that do not meet the requirement in paragraph

(b) of this section for a program year will receive a letter of non-compliance through the Quality Improvement and Evaluation System Assessment Submission and Processing (QIES-ASAP) system, as well as through the United States Postal Service. A SNF may request reconsideration no later than 30 calendar days after the date identified on the letter of non-compliance.

(2) Reconsideration requests must be submitted to CMS by sending an email to *SNFQRPRReconsiderations@cms.hhs.gov* containing all of the following information:

- (i) SNF CCN.
- (ii) SNF Business Name.
- (iii) SNF Business Address.
- (iv) CEO or CEO-designated personnel contact information including name, telephone number, title, email address, and mailing address. (The address must be a physical address, not a post office box.)
- (v) CMS identified reason(s) for non-compliance stated in the non-compliance letter.

(vi) Reason(s) for requesting reconsideration, including all supporting documentation. CMS will not consider an exception or extension request unless the SNF has complied fully with the requirements in paragraph (d)(2) of this section.

(3) CMS will make a decision on the request for reconsideration and provide notice of the decision to the SNF through the QIES-ASAP system and via letter sent through the United States Postal Service.

(e) *Appeals.* (1) A SNF that is dissatisfied with CMS' decision on a request for reconsideration may file an appeal with the Provider Reimbursement Review Board (PRRB) under 42 CFR part 405, subpart R.
(2) [Reserved]

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 12. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 424.20 [Amended]

- 13. In § 424.20—
 - a. Amend paragraph (a)(1)(ii) by removing the phrase “to one of the Resource Utilization Groups designated” and adding in its place the phrase “one of the case-mix classifiers that CMS designates”; and
 - b. Amend paragraph (e)(2)(ii)(B)(2) by removing the reference “§ 483.40(e)” and adding in its place the reference “§ 483.30(e)”.

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

■ 14. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102, 1128l, 1864, 1865, 1871 and 1875 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302, 1320a-7j, 1395aa, 1395bb, 1395hh) and 1395ll.

■ 15. Section 488.30(a) is amended by revising the definition of “Complaint surveys” to read as follows:

§ 488.30 Revisit user fee for revisit surveys.

(a) * * *
Complaint surveys means those surveys conducted on the basis of a substantial allegation of noncompliance, as defined in § 488.1. The requirements of sections 1819(g)(4) and 1919(g)(4) of the Social Security Act and § 488.332 apply to complaint surveys.

■ 16. Section 488.301 is amended by revising the definition of “Abbreviated standard survey” to read as follows:

§ 488.301 Definitions.

* * * * *
Abbreviated standard survey means a survey other than a standard survey that gathers information primarily through resident-centered techniques on facility compliance with the requirements for participation. An abbreviated standard survey may be premised on complaints received; a change of ownership, management, or director of nursing; or other indicators of specific concern. Abbreviated standard surveys conducted to investigate a complaint or

to conduct on-site monitoring to verify compliance with participation requirements are subject to the requirements of § 488.332. Other premises for abbreviated standard surveys would follow the requirements of § 488.314.

* * * * *

- 17. In § 488.308—
 - a. Redesignate paragraphs (e)(2) and (3) as paragraphs (f)(1) and (2);
 - b. Reserve paragraph (e)(2);
 - b. Add a paragraph heading for paragraph (f); and
 - c. Revise newly redesignated paragraph (f)(1) introductory text.

The addition and revision read as follows:

§ 488.308 Survey frequency.

* * * * *

(f) *Investigation of complaints.* (1) The survey agency must review all complaint allegations and conduct a standard or an abbreviated survey to investigate complaints of violations of requirements by SNFs and NFs if its review of the allegation concludes that—

* * * * *

■ 18. Section 488.314 is amended by revising paragraph (a)(1) to read as follows:

§ 488.314 Survey teams.

(a) * * *
(1) Surveys under sections 1819(g)(2) and 1919(g)(2) of the Social Security Act must be conducted by an interdisciplinary team of professionals, which must include a registered nurse.

* * * * *

Dated: April 21, 2017.
Seema Verma,
Administrator, Centers for Medicare & Medicaid Services.

Dated: April 21, 2017.
Thomas E. Price,
Secretary, Department of Health and Human Services.

[FR Doc. 2017-08521 Filed 4-27-17; 4:15 pm]

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FEDERAL REGISTER

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May 4, 2017

Part IV

The President

Proclamation 9603—National Mental Health Awareness Month, 2017
Proclamation 9604—Law Day, U.S.A., 2017

Presidential Documents

Title 3—

Proclamation 9603 of May 1, 2017**The President****National Mental Health Awareness Month, 2017****By the President of the United States of America****A Proclamation**

National Mental Health Awareness Month is a time to recognize the millions of American families affected by mental illness and to redouble our efforts to ensure that those who are suffering get the care and treatment they need. Nearly 10 million Americans suffer from a serious mental illness, such as schizophrenia, bipolar disorder, or major depression. Unfortunately, approximately 60 percent of adults and 50 percent of adolescents with mental illness do not get the treatment or other services they need. As a result, instead of receiving ongoing expert psychiatric care, these individuals often find themselves in emergency rooms, prisons, or living on the streets.

This month, and for the course of my Administration, I am committed to working with the Department of Health and Human Services, States, and communities throughout the country to find a better answer for the millions of Americans who need mental health services and their families. We must further empower States, law enforcement, first responders, doctors, and families to help those with the most severe mental illnesses; to ensure that people with mental illness have access to evidence-based treatment and services; and to fight the stigma associated with mental illness, which can prevent people from seeking care. We must also resolve to enhance our understanding of mental illness and its relationship to other complex societal challenges, including homelessness, substance abuse, and suicide; and we reaffirm our commitment to improving prevention, diagnosis, and treatment through innovative medical strategies.

Addressing substance abuse, addiction, and overdose is often critical to improving mental health outcomes. An estimated 8.1 million adults in America suffering with a mental illness also struggle with substance abuse. Many of those who struggled with both were among the 52,000 people in our country who died from a drug overdose in 2015. Approximately 44,000 Americans took their own lives in the past year, a preventable tragedy that frequently correlates with mental illness and substance abuse.

On May 4, 2017, my Administration, along with more than 160 organizations and 1,100 communities, will commemorate National Children's Mental Health Awareness Day. At this national event, Health and Human Services Secretary Tom Price will give special recognition awards to Awareness Day Honorary Chairpersons and United States Olympic champions Michael Phelps and Allison Schmitt for speaking openly about their behavioral health challenges and for encouraging young Americans to lead healthy lives. The event will help promote the importance of National Mental Health Awareness Month, providing Americans with resources related to treatment and services for mental health and substance abuse.

No American should suffer in silence and solitude. During Mental Health Awareness Month, I encourage all Americans to seek to better understand mental illness and to look for opportunities to help those with mental health issues. We must support those in need and remain committed to hope and healing. Through compassion and committed action, we will enrich the spirit of the American people and improve the well-being of our Nation.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2017 as National Mental Health Awareness Month. I call upon all Americans to support citizens suffering from mental illness, raise awareness of mental health conditions through appropriate programs and activities, and commit our Nation to innovative prevention, diagnosis, and treatment.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



Presidential Documents

Proclamation 9604 of May 1, 2017

Law Day, U.S.A., 2017

By the President of the United States of America

A Proclamation

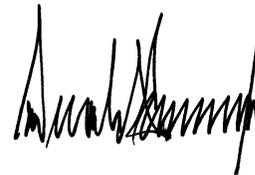
Today, we celebrate Law Day, as we have since President Dwight D. Eisenhower first commemorated it in 1958, and reflect upon our great heritage of liberty, justice, and equality. Our Founders risked their lives, fortunes, and sacred honor in defense of these values. More than 240 years ago, they set pen to paper and declared to the world “that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” The Declaration of Independence thus set our Nation on its revolutionary and transformative path to protecting people’s inherent, individual rights and liberties from the tyranny of an elite few who might use the powers of the state to trample upon them.

To protect the values for which they fought, the Framers of our Constitution created a government of limited and separated powers that enables the rule of law to prevail over the whims of government officials. As the great Justice Antonin Scalia frequently observed, every dictatorship has a bill of rights, but paper rights alone will not preserve liberty. It is our Constitution’s clear division of the sovereign’s power—vesting the power to create laws in the Congress, the power to execute laws in the President, and the power to interpret laws in an independent judiciary—that enables us to remain free and in control of our government.

Recognizing, as President Ronald Reagan did, that “freedom is never more than one generation away from extinction,” today we pay tribute to the government of laws, and not of men, that forms the foundation of our freedom. Therefore, on this Law Day, we rededicate ourselves to the rule of law, to the separation of powers, and, in the words of President Abraham Lincoln’s Gettysburg Address, to the preservation of “government of the people, by the people, for the people.”

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, in accordance with Public Law 87–20, as amended, do hereby proclaim May 1, 2017, as Law Day, U.S.A. I urge all Americans, including government officials, to observe this day by reflecting upon the importance of the rule of law in our Nation and displaying the flag of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.

A handwritten signature in black ink, appearing to be the name of Donald Trump, written in a cursive style.

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Federal Register

Vol. 82, No. 85

Thursday, May 4, 2017

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Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000**

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FEDERAL REGISTER PAGES AND DATE, MAY

20241-20432.....	1
20433-20540.....	2
20541-20818.....	3
20819-21106.....	4

CFR PARTS AFFECTED DURING MAY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

9595.....	20795
9596.....	20797
9597.....	20799
9598.....	20801
9599.....	20803
9600.....	20805
9601.....	20807
9602.....	20809
9603.....	21103
9604.....	21105

Executive Orders:

13754 (Revoked by EO 13795).....	20815
13791.....	20427
13792.....	20429
13793.....	20539
13794.....	20811
13795.....	20815
13796.....	20819
13797.....	20821

6 CFR

Proposed Rules:

5.....	20844
--------	-------

7 CFR

800.....	20541
810.....	20541

13 CFR

107.....	20433
----------	-------

14 CFR

25.....	20241, 20244, 20247, 20250, 20253
39.....	20823
71.....	20256

Proposed Rules:

39.....	20288, 20450, 20453
71.....	20290, 20554

21 CFR

11.....	20825
101.....	20825
177.....	20829
1308.....	20544

Proposed Rules:

170.....	20847
177.....	20847
189.....	20847

22 CFR

706.....	20434
----------	-------

29 CFR

1904.....	20548
-----------	-------

33 CFR

117.....	20257, 20442
165.....	20442

Proposed Rules:

110.....	20859
----------	-------

40 CFR

52.....	20257, 20260, 20262, 20267, 20270, 20274
62.....	20276
180.....	20279

Proposed Rules:

52.....	20292, 20293, 20294, 20295, 20297
62.....	20310
81.....	20297
751.....	20310

42 CFR

Proposed Rules:

409.....	20980, 21014
411.....	21014
412.....	20690
413.....	21014
418.....	20750
424.....	21014
488.....	20980, 21014

44 CFR

64.....	20832
---------	-------

45 CFR

1609.....	20444
-----------	-------

Proposed Rules:

1629.....	20555
-----------	-------

47 CFR

1.....	20833
32.....	20833
65.....	20833

Proposed Rules:

54.....	20558
73.....	20861

49 CFR

243.....	20549
----------	-------

Proposed Rules:

350.....	20311
----------	-------

50 CFR

17.....	20284
635.....	20447
648.....	20285
679.....	20287

Proposed Rules:

17.....	20861
---------	-------

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List May 2, 2017

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